

**H. RES. 965, AUTHORIZING REMOTE VOTING
BY PROXY IN THE HOUSE OF REPRESENTA-
TIVES AND PROVIDING FOR OFFICIAL REMOTE
COMMITTEE PROCEEDINGS DURING A PUBLIC
HEALTH EMERGENCY DUE TO A NOVEL
CORONAVIRUS, AND FOR OTHER PURPOSES**

MEETING
OF THE
COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS
SECOND SESSION

THURSDAY, MAY 14, 2020



Available via <http://govinfo.gov>
Printed for the use of the Committee on Rules

MEETING OF THE COMMITTEE ON RULES—H. RES. 965, AUTHORIZING REMOTE VOTING BY PROXY IN THE HOUSE OF REPRESENTATIVES AND PROVIDING FOR OFFICIAL REMOTE COMMITTEE PROCEEDINGS DURING A PUBLIC HEALTH EMERGENCY DUE TO A NOVEL CORONAVIRUS, AND FOR OTHER PURPOSES

**H. RES. 965, AUTHORIZING REMOTE VOTING
BY PROXY IN THE HOUSE OF REPRESENTA-
TIVES AND PROVIDING FOR OFFICIAL REMOTE
COMMITTEE PROCEEDINGS DURING A PUBLIC
HEALTH EMERGENCY DUE TO A NOVEL
CORONAVIRUS, AND FOR OTHER PURPOSES**

MEETING
OF THE
COMMITTEE ON RULES
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS
SECOND SESSION

THURSDAY, MAY 14, 2020



Available via <http://govinfo.gov>
Printed for the use of the Committee on Rules

U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON RULES

JAMES P. McGOVERN, Massachusetts, *Chairman*

ALCEE L. HASTINGS, Florida <i>Vice Chair</i>	TOM COLE, Oklahoma <i>Ranking Republican</i>
NORMA J. TORRES, California	ROB WOODALL, Georgia
ED PERLMUTTER, Colorado	MICHAEL C. BURGESS, Texas
JAMIE RASKIN, Maryland	DEBBIE LESKO, Arizona
MARY GAY SCANLON, Pennsylvania	
JOSEPH D. MORELLE, New York	
DONNA E. SHALALA, Florida	
DORIS O. MATSUI, California	

DON SISSON, *Staff Director*

KELLY DIXON CHAMBERS, *Minority Staff Director*

SUBCOMMITTEE ON LEGISLATIVE AND BUDGET PROCESS

ALCEE L. HASTINGS, Florida, *Chairman*

JOSEPH D. MORELLE, New York <i>Vice Chair</i>	ROB WOODALL, Georgia <i>Ranking Republican</i>
MARY GAY SCANLON, Pennsylvania	MICHAEL C. BURGESS, Texas
DONNA E. SHALALA, Florida	
JAMES P. McGOVERN, Massachusetts	

SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE

NORMA J. TORRES, California, *Chair*

ED PERLMUTTER, Colorado <i>Vice Chair</i>	DEBBIE LESKO, Arizona <i>Ranking Republican</i>
MARY GAY SCANLON, Pennsylvania	ROB WOODALL, Georgia
JOSEPH D. MORELLE, New York	
JAMES P. McGOVERN, Massachusetts	

SUBCOMMITTEE ON EXPEDITED PROCEDURES

JAMIE RASKIN, Maryland, *Chair*

DONNA E. SHALALA, Florida <i>Vice Chair</i>	MICHAEL C. BURGESS, Texas <i>Ranking Republican</i>
NORMA J. TORRES, California	DEBBIE LESKO, Arizona
JAMES P. McGOVERN, Massachusetts	

CONTENTS

May 14, 2020

	Page
Opening Statements:	
Hon. James P. McGovern, a Representative in Congress from the State of Massachusetts and Chair of the Committee on Rules	1
Hon. Tom Cole, a Representative in Congress from the State of Oklahoma and Ranking Member of the Committee on Rules	3
Witness Testimony:	
Hon. Steny H. Hoyer, a Representative in Congress from the State of Maryland and the Majority Leader	25
Hon. Rodney Davis, a Representative in Congress from the State of Illinois and Ranking Member of the Committee on House Administration	28
Questions and Additional Testimony:	
Hon. James P. McGovern, a Representative in Congress from the State of Massachusetts and Chair of the Committee on Rules	36
Hon. Tom Cole, a Representative in Congress from the State of Oklahoma and Ranking Member of the Committee on Rules	46
Hon. Norma Torres, a Representative in Congress from the State of California	55
Hon. Rob Woodall, a Representative in Congress from the State of Georgia	56
Hon. Ed Perlmutter, a Representative in Congress from the State of Colorado	66
Hon. Debbie Lesko, a Representative in Congress from the State of Arizona	84
Hon. Jamie Raskin, a Representative in Congress from the State of Maryland	86
Hon. Mary Gay Scanlon, a Representative in Congress from the State of Pennsylvania	89
Hon. Joseph D. Morelle, a Representative in Congress from the State of New York	90
Hon. Donna E. Shalala, a Representative in Congress from the State of Florida	94
Witness Testimony:	
Hon. Jack Bergman, a Representative in Congress from the State of Michigan	101
Hon. Dan Bishop, a Representative in Congress from the State of North Carolina	102
Hon. Bradley Byrne, a Representative in Congress from the State of Alabama	103
Hon. Jim Jordan, a Representative in Congress from the State of Ohio and Ranking Member of the Committee on the Judiciary	106
Hon. Greg Pence, a Representative in Congress from the State of Indiana	108
Questions and Additional Testimony:	
Hon. James P. McGovern, a Representative in Congress from the State of Massachusetts and Chair of the Committee on Rules	109
Hon. Tom Cole, a Representative in Congress from the State of Oklahoma and Ranking Member of the Committee on Rules	111
Hon. Rob Woodall, a Representative in Congress from the State of Georgia	112
Hon. Ed Perlmutter, a Representative in Congress from the State of Colorado	114

	Page
Questions and Additional Testimony—Continued	
Hon. Michael C. Burgess, a Representative in Congress from the State of Texas	116
Hon. Jamie Raskin, a Representative in Congress from the State of Maryland	118
Hon. Joseph D. Morelle, a Representative in Congress from the State of New York	119
Hon. Donna E. Shalala, a Representative in Congress from the State of Florida	122
Committee Mark-up:	
Mark-up of H. Res. 965.	123
H. Res. 965 (as introduced)	124
Notice of Action	277
H. Res. 965 (as reported)	279
H. Rept. 116–420—Report to accompany H. Res. 965	293
Additional Material Submitted for the Record:	
Article by Kevin McCarthy, House Minority Leader, Tom Cole, Ranking Member of the Committee on Rules, and Rodney Davis, Ranking Member, of the Committee on House Administration entitled “A Plan for the People’s House” dated May 4, 2020	5
Letter from Deborah N. Pearlstein, Professor of Law and Co-Director of the Floersheimer Center for Constitutional Democracy at the Jacob Burns Institute for Advanced Legal Studies, Cardozo School of Law, dated April 16, 2020	18
Article by Mark Strand entitled “Voting Present By Proxy is an Constitutional Oxymoron”	22
Letter from Rodney Davis, Ranking Member of the Committee on House Administration, to Chairman McGovern dated May 14, 2020	30
Letter from Erwin Chemerinsky, Dean and Jesse H. Choper Distinguished Professor of Law at the University of California Berkeley School of Law, to Chairman McGovern and Ranking Member Cole dated May 13, 2020	40
Opinion Editorial from The Hill by Saikrishna Prakash, law professor at the University of Virginia and Senior Fellow at the Miller Center of Public Affairs, entitled “One virtue of a virtual Congress”	43
Letter from Mike Rogers, Ranking Member of the Committee on Homeland Security, to Members of the Ad Hoc Working Group dated April 30, 2020	70
Letter from Rob Bishop, Ranking Member of the Committee on Natural Resources, to Chairman Grijalva dated April 30, 2020	72
Letter from Kevin McCarthy, House Minority Leader, to Speaker Pelosi dated April 21, 2020	74
Letter from Ranking Members to Majority Leader Hoyer dated May 14, 2020	75
Letter from Bennie G. Thompson, Chairman of the Committee on Homeland Security, to Members of the Ad Hoc Working Group dated April 30, 2020	80
Letter from Raúl M. Grijalva, Chair of the Committee on Natural Resources, to Ranking Member Bishop dated May 1, 2020	81
Letter from Bennie G. Thompson, Chairman of the Committee on Homeland Security, to Ranking Member Rogers dated May 5, 2020	83
Report from the National Conference of State Legislatures entitled “Continuity of Legislature During Emergency”	96
Letter from Norman Ornstein, Resident Scholar at The American Enterprise Institute to Chairman McGovern	155
Letter from Hakeem Jeffries, a Representative in Congress from the State of New York and Chairman of the House Democratic Caucus, to Chairman McGovern dated May 13, 2020	159
Statement by Ann Kuster, a Representative in Congress from the State of New Hampshire	160
Press Release from Jim Langevin, a Representative in Congress from the State of Rhode Island	161
Letter from Scott H. Peters, a Representative in Congress from the State of California, to Chairman McGovern and Ranking Member Cole dated May 13, 2020	162
Letter from Mike Thompson, a Representative in Congress from the State of California, to Chairman McGovern dated May 13, 2020	165

	Page
Additional Material Submitted for the Record—Continued	
Statement by Lori Trahan, a Representative in Congress from the State of Massachusetts	166
Letter from Daniel T. Kildee, a Representative in Congress from the State of Michigan, along with Representatives Perlmutter, Levin, Lowenthal, and Lawrence, to Chairman McGovern and Ranking Member Cole dated May 13, 2020	167
Statement by Tony Cárdenas, a Representative in Congress from the State of California	169
Statement by Linda T. Sanchez, a Representative in Congress from the State of California	170
Statement by Filemon Vela, a Representative in Congress from the State of Texas	171
Letter from Frank Pallone, Jr., Chairman of the Committee on Energy and Commerce, to Chairman McGovern dated May 14, 2020	172
Letter from Mark Pocan, a Representative in Congress from the State of Wisconsin and Co-Chair of the House Progressive Caucus, to Chairman McGovern dated May 14, 2020	182
Statement by Steve Cohen, a Representative in Congress from the State of Tennessee	254

**H. RES. 965, AUTHORIZING REMOTE VOTING
BY PROXY IN THE HOUSE OF REPRESENTA-
TIVES AND PROVIDING FOR OFFICIAL RE-
MOTE COMMITTEE PROCEEDINGS DURING
A PUBLIC HEALTH EMERGENCY DUE TO A
NOVEL CORONAVIRUS, AND FOR OTHER
PURPOSES**

THURSDAY, MAY 14, 2020

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RULES,
Washington, DC.

The committee met, pursuant to call, at 11:06 a.m., in Room 1100, Longworth House Office Building, Hon. James P. McGovern [chairman of the committee] presiding.

Present: Representatives McGovern, Torres, Perlmutter, Raskin, Scanlon, Morelle, Shalala, Matsui, Cole, Woodall, Burgess, and Lesko.

OPENING STATEMENTS

The CHAIRMAN. The Rules Committee will come to order.

Before I give my opening statement, I just want to read a guidance from the attending physician, Dr. Monahan. And we asked him specifically about the use of face coverings during proceedings like these, and while he has not mandated their use, he did share that, and I quote: My preference is that members retain their face covers when speaking as speaking is an activity which can release virus particles, especially if the speaking is of a high-spirited nature, end quote.

I have never had a meeting in the Rules Committee that hasn't been of a high-spirited nature, so we are going to leave it up to individual members to decide, but I think to be cautious here, I am going to keep mine on, and I hope, you know, that everybody else will obviously be mindful of the reason why there is guidance on this issue.

**STATEMENT OF THE HONORABLE JAMES P. MCGOVERN, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAS-
SACHUSETTS AND CHAIR OF THE COMMITTEE ON RULES**

It has been roughly 3 months since the first community transmission of COVID-19 was discovered in the United States. Since that time, our world has changed dramatically. There are now more than 1.3 million confirmed cases across 50 States, Wash-

ington, D.C., and four territories. More than 81,000 of our citizens have lost their lives to this virus, and the number continues to rise each and every day. And communities have taken unprecedented steps to slow the spread through stay-at-home orders and travel restrictions.

We don't know how long it will take to develop a treatment or a vaccine to contain this virus or for lives to return to normal, but we do know that this House must continue legislating. We have to keep responding to this pandemic and provide oversight of the trillions of dollars in emergency spending passed by Congress, all while completing our more routine business. And we have to do so in a way that is safe for all those around us, whether it is fellow travelers, staff, the public, or members of the media.

The way we have done things will have to change, at least temporarily. That means physical distancing, it means wearing masks, and it means embracing technology during this pandemic so that we can hold virtual hearings and markups and vote remotely on the House floor.

Local governments and countries around the world have taken similar steps. It is time for this House to utilize 21st century technology too.

This resolution is a result of weeks of collaboration. It has been repeatedly refined and contains many Republican provisions. I don't suggest these steps lightly and I am not looking to change the fabric of this institution. I believe the best ideas still come from working in-person and side by side, but we must adapt to this extraordinary circumstance and make temporary changes during this pandemic. They will help us get our work done today and prepare us for whatever might happen tomorrow.

Experts are already telling us the second wave of this virus could be worse in the fall. It would be a dereliction of our responsibility to do nothing. Further delay is not an option either. We have released a report, we formed a bipartisan task force, and we have had weeks and weeks of talks. It is time to act.

I know there will be a lot of discussion today, and I welcome this conversation. I also invite all my colleagues to support this proposal because the status quo is not going to cut it.

Before I turn it over to our Ranking Member, Mr. Cole, I want to recognize his leadership, not just on this committee, but on the bipartisan task force as well. He cares deeply about this institution. And I know, regardless of where we stand on this particular proposal, we agree on making sure that this House functions on behalf of the American people. I have always appreciated his courtesy and his open-mindedness.

And I just say, finally, that I regret very much that we are not coming here today with a proposal that both our leaderships embrace. And, you know, I think all of us—I certainly did—wanted to see something come to the floor that received such overwhelming support that it would pass by voice vote or by unanimous consent, but I think we have very different opinions about how we should proceed. And I think some of us may even have different opinions about the urgency of the moment that we now find ourselves in.

So having said that, I am happy to turn it over to the gentleman from Oklahoma, my friend, Mr. Cole, for any remarks he wishes to make.

STATEMENT OF THE HONORABLE TOM COLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA AND RANKING MEMBER OF THE COMMITTEE ON RULES

Mr. COLE. Thank you very much, Mr. Chairman. And I am just, for the record, going to take my mask off only when I speak. I will speak in a very controlled manner, and if I get spirited, I will put the mask back on. But—and I appreciate your courtesy there. And I think, as a rule, you are wise to do as you suggest.

Mr. Chairman, our original jurisdiction hearing today is on the most consequential change to the rules of the House of Representatives in my tenure here. Indeed, this may be the most consequential change to the rules since the establishment of the modern committee system and the Legislative Reorganization Act of 1946.

Today, the majority is proposing, for the first time in our history, a system of proxy voting on the floor of the House of Representatives at the same time the proposed rules changes would also authorize committees to perform remote proceedings, including mark-ups. And it also allows for the adoption of totally remote voting upon the certification of one Member of Congress.

Though the changes are purportedly limited to the present COVID-19 pandemic timeline, the temporary change we make to the rules today becomes the precedent we follow tomorrow.

Mr. Chairman, 3 weeks ago, Speaker Pelosi did an extraordinarily wise thing. Rather than pushing through partisan proxy voting rules similar to the one we are considering today, she instead formed a working group of six members to consider these challenges. This working group consisted of Majority Leader Hoyer, Republican Leader McCarthy, Chairperson Lofgren, and Ranking Member Davis of the House Administration Committee and, of course, you and I as chair and ranking member of the Rules Committee.

Over the past 3 weeks, this working group has been wrestling with the question of whether and, if so, how Congress can continue to operate during this pandemic. I particularly want to commend you, Mr. Chairman, for the thoughtful and productive way in which you approach these discussions. And rest assured, my dissatisfaction with today's resolution is no criticism of you personally. Quite the opposite. I thought you really worked hard to bridge the gaps between us and made some meaningful concessions in the course of our discussions.

Frankly, I commend every member of the committee, because I think they all worked that way and tried to find common ground. In this case, we just simply didn't get there.

Last Monday, Republican Leader McCarthy, Ranking Member Davis, and I posted an article on Medium that laid out four strategies for reopening the House of Representatives. These strategies were designed to strike the necessary balance between health and institutional concerns that allow the House to begin to move forward in a safe and healthy way.

Before I continue, I request unanimous consent to insert a copy of that article into the record.
The CHAIRMAN. Without objection.
[The information follows:]

A Plan for the People's House

Four Strategies to Reopen Congress and Restore America's Voice

Kevin McCarthy

Benjamin Franklin once said, “If you fail to plan, you are planning to fail.”

Recently, we called on Speaker Pelosi to establish a clear, safe, and effective plan for reopening the House of Representatives. This follows the White House and America's governors releasing their own detailed plans for a phased reopening of society, and now, both the United States Senate and Democratic Speaker of the California State Assembly calling their members back into session.

In the interim, a bipartisan taskforce has been convened — on which we are all serving — to further explore ways in which Congress can operate during this challenging time. While differences remain, it has become clear through our initial meetings that all members of our taskforce share several fundamental beliefs.

First, the business of the People's House is “essential work” that must not be sidelined or ground to a halt.

Second, there is intrinsic value in a Congress — a physical meeting of people and ideas — that should be dutifully guarded.

And third, any changes to centuries-old rules and precedents of the House should be done in a deliberate and bipartisan way.

As we enter this indeterminate period between outright mitigation and a return to normalcy, everyone recognizes that our typical ways of doing business will need to adjust. Simply put, Congress will look and feel different.

However, we believe there is a pathway forward that enables the House to fully perform its key functions without compromising our shared values or sacrificing bedrock norms.

To that end, we offer four strategies that should form the basis of any plan to reopen Congress and restore America's voice. These strategies are based on the advice of public health professionals, as well as guidance from parliamentary experts with decades of combined House experience.

We believe embracing this approach would achieve the necessary balance between health and institutional concerns — and hopefully build a more resilient and productive legislative branch in the process.

Strategy 1: Modify Existing Practices and Structures

The Rules Committee majority staff report on voting options during the pandemic states: “By far the best option is to **use the existing House rules and current practices**” (emphasis original).

Already, Congress has demonstrated its ability to adapt and to do so responsibly.

Earlier this month, the Rules Committee successfully convened an in-person business meeting in accordance with health guidelines developed by the Attending Physician and Sergeant at Arms. Likewise, over 50 members participated in a hearing on COVID-19 response efforts hosted by the Committee on Small Business. And this week, the Labor-HHS Appropriations Subcommittee will hold an in-person hearing on the coronavirus pandemic.

Beyond committee business, nearly 400 members came to the House Floor on April 23 in an orderly and physically distant fashion to record their votes on two consecutive measures, a process that Speaker Pelosi characterized as having been executed “fabulously.”

Moving forward, we should expand these protocols to reduce density and congestion in every facet of our work.

House office buildings and individual office floor plans should be assessed to provide new provisional occupancy levels — with an eye towards possible reconfigurations to accommodate physical distance.

Additionally, measures should be explored to engineer temporary controls or barriers in locations where physical distance is difficult to achieve, as is currently happening in grocery stores and other places of public accommodation across America. For example, plexiglass dividers could be installed in high trafficked areas, like security checkpoints, or possibly in committee hearing rooms along the dais to provide further separation between members.

Strategy 2: Employ a Phased Return with Committees

Just as our states are employing a phased reopening approach, Congress should do so as well — beginning with committees and subcommittees as the engines of regular order.

Currently, the average total membership of a standing House Committee is approximately 40 members, with average subcommittee membership in the teens.

Each committee should present an outline to the Majority Leader detailing their projected business meetings for the month ahead, along with estimated attendance levels.

Working backwards, this information could be used to generate a staggered business calendar, with rotating use of larger committee hearing rooms where necessary. Precedence should be given to bipartisan COVID-19 response measures and other high-priority legislative items, such as the National Defense Authorization Act, Water Resources Development Act, and FY21 appropriations measures.

By directing committees to focus on legislation that has bipartisan and bicameral appeal, we can make the most of each member's time and effort, thereby making the House more productive.

This system would also ensure greater transparency and regular order for all members — as opposed to centralized decision-making by a select group of leadership and staff that reduces the role of representative to merely voting “yea” or “nay” on pre-drafted proposals.

At the start, we do not envision routine recorded votes occurring in the House every day or perhaps even every session week. Instead, our voting schedule should be reimaged in the near-term, with postponement authority providing a structure to queue up bills at the end of a week or work period.

Lastly, regular morning hour time should be restored so all members have the opportunity give one- and five-minute speeches

from the House Floor, an essential forum that has not been available now for over a month.

Strategy 3: Deploy Technology in a “Crawl, Walk, Run” Progression

The rules change proposal introduced by Chairman McGovern would enable sweeping use of technology for every element of committee business.

This is concerning for a variety of reasons — many of which are catalogued in the Rules Committee majority staff report — including untested assumptions that members have “reliable, connected technology, knowledge of how to use that technology, access to round-the-clock technical support, ...[and] secure connectivity with the capacity to transmit potentially large amounts of data,” just to name a few.

From a security standpoint, the House averages 1.6 billion unauthorized scans, probes, and malicious attempted network cyber-connections per month. Earlier this month, our colleagues experienced this kind of incident firsthand with hackers interrupting a House Oversight Committee video event multiple times.

In our view, technology should only be deployed in a “crawl, walk, run” progression. Before we rush to discard over 200 years of

precedent, we should require that rigorous testing standards be met, ample feedback be provided, and bipartisan rules of the road be agreed upon and made public to truly safeguard minority rights.

We believe “hybrid” hearings — an idea initially proposed by Democrats on the taskforce — could serve as a useful proof-of-concept to consider, similar to the model currently being used in the United Kingdom to facilitate virtual question time in the House of Commons.

For the purposes of these hybrid hearings, in-person quorum requirements should remain in place (most committee rules require only two members be present to hear testimony), with allowances for committee and non-partisan support staff to guide the proceedings and troubleshoot any technical problems. For the reasons outlined above, virtual participation should not become the default — but should instead be reserved for members in at-risk categories or who are otherwise unable to travel to D.C.

Under this proposal, committees that regularly handle sensitive and classified materials, including Intelligence and Ethics, would still be required to meet in-person.

We cannot recommend using virtual platforms for committee markups, given the mountain of unanswered questions regarding

how more complex and involved procedural maneuvers would work in a remote setting.

Strategy 4: Accelerate Active Risk Mitigation Practices

Thanks to the efforts of the Attending Physician, in coordination with the House Administration Committee, the fourth strategy has already been set in motion.

Personal Protective Equipment (PPE) kits — including gloves, facemasks, and alcohol-based hand sanitizers — have been provided to each member office and committee, with additional supplies available on-demand.

Hand sanitizing stations are now ubiquitous around the Capitol campus — including on the House Floor — while enhanced cleaning procedures have become the new standard, with areas ripe for surface contamination having been limited or removed.

Staffing has been kept to a minimum through continued use of teleworking procedures, while the Capitol remains open to only members, required staff, and credentialed press.

Even so, these mitigation practices can be accelerated in several key ways.

Measured screening procedures should be considered, consisting of either self-reported medical diagnostic assessments, at-home temperature monitoring, touchless thermal temperature checks at office entry points, or any combination thereof.

A uniform “return-to-work” policy — in accordance with existing CDC guidelines — should be adopted for any staffer experiencing signs of illness.

Finally, our ongoing and iterative testing regime should be scaled as test availability increases nationwide. This plan should progress to incorporate asymptomatic randomized testing, and eventually, FDA authorized rapid antigen tests.

Conclusion

We fully appreciate the extraordinary nature of the challenge before us. However, when it comes to fundamentally altering how the House operates — in this case, potentially abandoning the Capitol for the remainder of the 116th Congress under the introduced Democratic proposal — every avenue should first be explored that preserves enduring institutional rules while prioritizing member health.

As Chairman McGovern recently wrote, “decisions we make today will influence the choices made in this chamber 100 years from now.”

We agree — and firmly believe it is our job as leaders of our respective parties to ensure the most reasoned voices prevail on this critical matter, not simply the loudest ones.

This pandemic has claimed too many lives and livelihoods already. We must not allow the institution we are tasked with safeguarding to be the next.

Written By:

Kevin McCarthy | House Republican Leader

Tom Cole | Ranking Republican, House Rules Committee

Rodney Davis | Ranking Republican, House Administration Committee

Mr. COLE. Thank you very much, Mr. Chairman.

The four strategies we highlighted were as follows: First, modifying existing practices and structures to utilize existing House rules and current practices. Second, employing a phased return with committees or, in other words, bringing back individual committees to work on essential and needed legislation in a safe, socially distance format. Third, deploying technology in a crawl, walk, run progression. And fourth, continuing to accelerate active risk mitigation practices.

These four principles would allow Congress to safely begin to return to D.C. to continue our work. It would allow committees to come back to conduct hearings and in-person markups, to draft new legislation to combat this crisis, and provide relief for the American people. It would have limited the risk of using unproven technology that may or may not be secure from wrongdoers, such as hackers and foreign governments. And it would have ensured that Congress continues to meet as a Congress, literally a physical meeting between delegates.

Above all else, Republicans believe that any change to the centuries old rules of the House should only be done in a bipartisan way that achieves consensus. We believe the proposal we outline would achieve that goal.

Instead, this proposed rules package fundamentally changes two key rules of the House. First, for the first time in history of the Chamber, we are being asked to approve a system of proxy voting for members on the House floor. That rules change also holds open the possibility of moving forward with totally remote voting once the chairperson of the House Administration Committee certifies the technology for that use. Second, again, for the first time in our history, we are being asked to approve a measure that would allow committees to operate remotely and approve legislation remotely.

While I have no doubt that the majority's intentions are good when it comes to proposing these two changes, I believe they will fundamentally alter the nature of the institution and not for the better, and I cannot support them.

First and foremost, I am deeply concerned about the precedent this sets for the institution. Even a temporary measure to deal with the current crisis could be used to establish precedent for something else down the line. And when it comes to the fundamental way the House does business face-to-face with members building relationships and hashing out differences, I am very reluctant to set a new precedent that erodes our normal practice.

Second, I have real concerns about whether or not any system of remote voting or proxy voting is constitutional. The language of the Constitution clearly contemplates members being physically present in the chamber to conduct business. A move to any other kind of procedure that involves members not being physically present in the chamber to vote and to make a quorum will put the legislation passed by those methods at risk of court challenges.

The legislation that we will likely pass by these methods in the near term will probably be bills along the lines of the CARES Act, bipartisan measures that deal with the coronavirus pandemic and resulting economic distress. It does not make sense to me to put

such important legislation at risk of a court challenge because we failed to comply with constitutional requirements.

Third, I am not completely convinced that moving to a proxy voting system or remote voting system is necessary at this time. There are other methods of operating that comply with our existing rules. By far, the best option is to operate with bipartisan agreement and unanimous consent, which would not require members to return to Washington during this crisis if there are travel concerns.

In the event that is not possible, we have already proven our ability to assemble and vote in person twice during this pandemic. Tomorrow, we will do so for a third time.

I am personally deeply concerned about the proposed remote voting rules change, even if it is not imposed right away. The rules change we are considering today will allow for remote voting to take effect without an additional vote of the House and instead only upon certification of technology by one member, Chairperson Lofgren. This is ceding the authority of the Rules Committee and it denies the entire House deliberation on the technology and a vote on making such a consequential change. At the very least, I think the entire House should have an opportunity to evaluate and vote upon any remote voting system before such a change takes effect.

On the second piece of your resolution which will allow committees to operate remotely, I have similar concerns, but I am most concerned about what it means for the institution. Our present committee structure has meant that, for decades, the members of the House meet together to discuss new pieces of legislation. Though we may not agree with each other and sometimes may not even particularly like one another, all present company excluded, of course, the committee system has forced us as members of the House of Representatives to sit down in a room and work together. It has forced us to get to know one another, to learn from each other's perspective, and sometimes learn that we have more in common with each other than we previously recognized. But if this measure passes, that will no longer be the case.

No longer will members be required to sit together in a room. Instead, we will lose that fundamental piece of our institution's character. I think that is a grave loss for us as members and for the country.

I am also deeply concerned with how remote committee action will actually work. With such an untested and unproven procedure, there will undoubtedly be significant hiccups moving forward.

When markups happen, how will we ensure that chairs must recognize members for timely motions? How will we ensure that minority members will receive fair and equal time and fair and equal opportunity for recognition? How sure are we that the technology we intend to use is secure and protected from wrongdoers, whether hackers or foreign nations?

Today's rule is silent on these matters, leaving most of the specifics to be determined later by you, Mr. Chairman. We need to do better.

I am disappointed that our bipartisan discussions on how to make Congress work during this time of national emergency did not result in consensus, although I would be the first to acknowl-

edge we certainly made progress and it was certainly a sincere effort. But it is even more disappointing to understand how these rule changes, in my opinion, will begin to erode the very fabric of the House.

With that, Mr. Chairman, I thank you and yield back.

The CHAIRMAN. Well, I want to thank the gentleman for his comments, and I want to also thank him for keeping his tone below a high-spirited nature. So I appreciate that as well.

And I want to ask unanimous consent to submit into the record a letter from Deborah Pearlstein, a constitutional law professor from Cardozo School of Law. In her letter, which I strongly recommend to all my colleagues that they read in full, Professor Pearlstein writes: I believe adopting procedures to allow for remote voting under these extraordinary circumstances is not only lawful but essential to the maintenance of our constitutional democracy. The Constitution contains no specific requirement of physical presence for members to vote. What the Constitution does instead, as the courts have repeatedly recognized, is leave it up to each House of Congress to determine the rules of its proceedings. Indeed it is just such constitutional flexibility that has enabled Congress to embrace the various informal solutions it has adopted over the years to do business, including relying on members to give unanimous consent to a vote, even if something less than an actual majority of members is physically present on the House floor.

[The information follows:]

CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

Deborah N. Pearlstein
Professor of Law
Co-Director, Floersheimer Center for Constitutional Democracy

PHONE: 212.790.0276
FAX: 212.790.0203
E-MAIL: dpearlst@yu.edu

April 16, 2020

Dear Chairman McGovern:

Thank you for your statement today recommending the implementation of temporary remote voting procedures in Congress during this tragic pandemic. As a professor of constitutional law, and a scholar who has written extensively on separation of powers issues in U.S. Government, I believe adopting procedures to allow for remote voting under these extraordinary circumstances is not only lawful, but essential to the maintenance of our constitutional democracy. Recognizing that specific procedures for remote voting may still be in development, the analysis offered here focuses foremost on the broad scope of Congress' constitutional authority to regulate its voting procedures.

As with much else in the Constitution, the description the text provides of how Congress is to fulfill its legislative "duties" once members have been elected is relatively brief. Article I, Section 5 provides that there must be "a Quorum to do business," which the Constitution defines as constituting simply "a Majority" of each House. The same Section likewise specifies that each House must keep a "Journal of its Proceedings," which must be published "from time to time," and which may, if a sufficient number of members desire, reflect how every member voted "on any question." The Constitution adds that neither House can adjourn for more than three days, or move the session to some other place, without the consent of the other House – a provision designed to prevent a single House from thwarting all congressional action by simply absenting themselves indefinitely.

There can be little question that the Framers imagined the legislature would do its work while assembled in some physical location. In 1787 when the Constitution was drafted, they could scarcely have imagined any other functional way of proceeding. Various other constitutional provisions thus refer to Congress as "meeting" (Art. I, Sec. 4) or "assembling" (Art. I, Sec. 3), and one even provides a mechanism by which members can compel "the Attendance of absent Members," (Art. I, Sec. 5) meaning presumably those members not otherwise present where Congress is meeting. Of course, none of the clauses in which those terms appear address how Congress casts or counts its votes. Indeed, neither the document itself nor any Supreme Court decision defines what counts as "attendance" or "assembling," much less how such "attendance" may be taken, or such "assemblage" may be accomplished. The Constitution equally contains no specific requirement of physical presence for Members to vote. What the Constitution does instead – as the courts have repeatedly recognized – is leave it up to each House of Congress to "determine the Rules of its Proceedings." (Art. I, Sec. 5) As the Supreme Court explained in *United States v. Ballin*, 144 U.S. 1 (1892), so long as there is a

JACOB EUSBS INSTITUTE FOR ADVANCED LEGAL STUDIES

BROOKDALE CENTER • 55 FIFTH AVENUE • NEW YORK, NY 10003-4391

“reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained,” the content of those rules are “beyond the challenge of any other body or tribunal.”

Indeed, it is just such constitutional flexibility that has enabled Congress to embrace the various informal solutions it has adopted over the years to “do business,” including relying on members to give “unanimous consent” to a vote even if something less than an actual majority of members is physically present on the House floor. But while such well settled procedures are surely constitutional, they may not always function to advance the system of majority rule the Constitution so plainly contemplates. As we recently saw when Congress enacted a substantial stimulus bill just last month, it is possible for one House member, acting alone, to single-handedly defeat the manifest preference of the bipartisan majority by insisting upon an actual demonstration that a majority of members were “present” (a term contained in House Rules, not in the Constitution itself). This forced House leaders to make a choice the Constitution cannot be understood to compel – between surrendering the will of the majority to the demands of a single man, or insisting, as they did, that Members jeopardize their safety (and thus their ability to effectively represent their constituents going forward) by defying lawful public health restrictions to travel and meet in Washington, D.C.

It is precisely in order to avoid such absurd results that Congress has embraced a variety of measures throughout its history to adjust to developing technologies and changing demands. Thus, for example, current House Rules provide that in the event the existing electronic voting system is “inoperable,” the Speaker may direct the vote to be conducted through alternative methods, including through the use of “tellers” designated by the Speaker to “record the names of the Members voting on each side of the question.”¹ The teller system was an innovation put in place before the current electronic system was available, one among key reforms designed to strengthen Congress’ ability to maintain a public record of Members’ votes.² The particular challenge of ensuring that Congress could continue to operate during the outbreak of infectious disease was indeed the subject of one of Congress’ first efforts to provide for alternative rules of operation. Following Congress’ return after the yellow fever epidemic that devastated the then-capital of Philadelphia in the summer of 1793, Congress adopted a law providing that in circumstances when “the prevalence of contagious sickness” made it “be hazardous to the lives or health of the members to meet at the seat of Government,” the President could “convene Congress at such other place as he may judge proper.”³ If Congress can delegate to the President the power to move congressional operations entirely, surely it can reserve for itself the lesser power to make whatever far more modest amendment to process is required to ensure Congress is able to vote in the same, extraordinary circumstances.

Finally, the temporary remote voting procedures as you have sketched them thus far appear to bear an entirely “reasonable relation” to the goal you aim to achieve, namely, ensuring that Congress preserves the ability to vote in a way that maintains the institution’s representative character, protects the transparency of its operations, and fairly and accurately reflects the will of the American people. By keeping remote voting procedures tied as closely as possible to the existing system, the proposed approach protects Members’ ability to participate in votes regardless of geographic location, technical

¹ Rules of the House of Representatives, 116th Congress, Jan. 11, 2019, Rule XX(4)(a).

² See Marjorie Hunter, *First Recorded Teller Vote Is Taken in the House*, N.Y. TIMES, p. 21, Mar. 4, 1971, <https://www.nytimes.com/1971/03/04/archives/first-recorded-teller-vote-is-taken-in-the-house.html>.

³ Act of Apr. 3, 1794, c. 17, 1 Stat. 353, codified at 2 U.S.C. §27.

knowledge or means; minimizes the risk of foreign or other unlawful interference in the vote; and maximizes Congress's ability to fairly reflect the will of the majority of the people even during the present crisis. The proposed approach contains essential safeguards to ensure that Members' preferences are fully and accurately recorded; as you emphasized in your recent statement, Members designated to submit voting cards on behalf of other elected Representatives may only act pursuant to the direct, express instruction of the elected Representative, retaining no discretion in carrying out the ministerial function they play in the modified voting process. As ever, Members remain subject to all the disciplinary powers the House possesses to ensure the appropriate exercise of their duties.

In short, with limited reforms that maximize Members' ability to represent the wishes of their constituents, while minimizing disruption and confusion in House operations, Congress can succeed in preserving the essential constitutional function of the legislative branch even amidst an unprecedented pandemic. It is a critically important initiative in these extraordinary times.

As ever, I thank you for your efforts, and for the opportunity to share my views.

Sincerely,

Deborah N. Pearlstein

And finally, the temporary remote voting procedures bear an entirely reasonable relation to the goal you aim to achieve, namely ensuring that Congress preserves the ability to vote in a way that maintains the institution's representative character, protects the transparency of its operations, and fairly and accurately reflects the will of the American people.

And I just also want to say, again, that a lot has changed since the first Congress. None of us arrived by horse and buggy today, and the story of the people's House is the story of change and adaptation to meet the needs of the times. And as I said, the House used to conduct every vote by roll call. Today, the House uses electronic voting cards and a computer tallies the votes. The process of unanimous consent, that is, allowing bills to pass with just two members in the chamber, was developed in response to the Spanish flu pandemic, despite the Constitution requiring a majority of members to conduct business.

In both the House and the Senate, you see, to this day, we have created and disbanded committees to fit the needs of our Nation. We have changed how to count a quorum. We have changed how to vote—how we vote, and we are here today, once again, to meet the challenges that we face.

And so anyway, I point that out because I think we need to put this in perspective. And I want to say, I want to agree with my ranking member, I do not want to change the character of this institution. I don't like the idea that we have to be here today to even talk about this. I do value our in-person interaction and I don't want to go down a slippery slope. And I think we all need to be clear on that. But I do think we find ourselves in an extraordinary moment.

I yield to the gentleman.

Mr. COLE Thank you very much, Mr. Chairman. Thank you for your kind remarks.

And I just would ask unanimous consent to place into the record an article by distinguished congressional scholar Mark Strand, entitled, "Voting Present By Proxy is an Constitutional Oxymoron."

The CHAIRMAN All right. Without objection.

[The information follows:]

Voting Present by Proxy is an Unconstitutional Oxymoron

The Constitution leaves a great deal of leeway to the House and Senate for establishing their own rules of procedure. But one provision is absolutely clear: in both chambers, a quorum is required to do business. And a quorum is defined as a majority of its members.

Article 1, [section 5](#), of the U.S. Constitution states:

a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

If a physical presence were not necessary, it would be unnecessary to “compel the Attendance of absent Members.” Although proxy voting was possible at the time of the Constitutional Convention, the participants spent long days waiting for their colleagues to arrive to conduct business in person. Being physically present does make for an inefficient system, but that’s what the Founders intended – they did not intend to make it easy to reach consensus and govern. The constitutional provision for the quorum was designed to protect the public.

Quorums are not self-enforcing. So a quorum is assumed unless it is questioned by a Member. That is why the House carries on non-controversial business even when it is evident that only a few Members are on the Floor. To conduct business such as voting, however, a quorum can be demanded by any Member through a point of order. Once demanded, the House cannot conduct any business – even a request to withdraw the call to quorum – until a quorum is attained. This protects the minority party. Once a party tries to take action beyond what has been agreed to by consensus, the other side can quickly shut that down by raising an objection to the lack of quorum. If a quorum cannot be achieved, under the Constitution, the only business allowed is a motion to adjourn.

This raises a question of whether the House can change its rules of procedures to allow proxy votes to count towards a quorum. Besides the oxymoronic notion that a member could vote “present by proxy,” the House’s precedents argue against it.

Proxy voting has never been allowed or even considered on the House Floor. But proxy voting has, from time to time, been allowed in Committees. Even though it has been banned since 1995, the House has established precedents for how proxy voting was treated in prior Congresses.

While Members who were absent could give their proxy to another Member on the Committee, allowing their votes to be counted, [Deschler’s Precedents](#) shows that the “no measure is to be reported from any committee unless a majority of the committee was actually present when the measure was ordered reported.” This echoes [Cannon’s Precedents](#), a previous compilation of the precedents, which states:

Recognition of voting proxies by standing committees is a matter to be respectively determined by each committee for itself, but proxies may not be counted to make a quorum.

In other words, when allowed, Committees could count proxy votes, but they first had to have a majority of actual people attending or none of the votes would count.

It might be possible for the House to change the rules to allow proxy voting, but only after attaining a physical quorum. The one thing it cannot do under the Constitution and under the House's own precedents is to allow those proxies to count toward a physical quorum. So it might be possible that, consistent with the Constitution, some proxy voting might be allowed if there is a physical majority present for a vote.

House Rules Committee Chairman McGovern has stated his view that Members who vote by proxy must give specific instructions on how their votes would be recorded, and those instructions should be printed in the Congressional Record. If done this way, where most Members were present, and only a few were unable to make it to Washington, it would be similar to a traditional courtesy of "pairing votes." In the not-so-distant past, "vote pairing" would occur when a Member who was voting opposite of the absent Member withheld their vote and announced a pair with the absent member, thus offsetting each other's vote. In today's highly polarized Congress, such courtesies are rare, which might indicate the need for an updated system.

The one thing that Congress cannot allow is the idea of conducting controversial business with only a small number of Members present. It is understandable why the House Democratic leadership wants to put this rule in place since we are in the midst of a pandemic. At the same time, political leaders cannot simply ignore constitutional requirements or proper parliamentary forms to resolve the issues. Congress is, by definition, the gathering of people together to solve issues. This cannot – and should not – be done remotely.

Observers of Congress agree that one of the primary causes of divisive partisan polarization is that Members no longer form relationships and friendships. Back when Members met five days a week instead of three, they moved their families to Washington DC. Their kids went to school together, and their spouses formed friendships with other spouses. It's human nature to be much more civil to someone whose spouse is friends with yours or whose kid is on your kid's soccer team.

Most importantly, legislators need to legislate. There is a give and take created by amendments and debates that require direct human interaction. Too little of that goes on now – how much worse will it be if members are just "emailing it in?" Today, leaders from the House and Senate negotiate with the President, and the other 533 legislators vote on their agreement. That's not legislating.

Proxy voting might be more efficient than waiting for everyone to physically get to Washington DC. But efficiency was not a goal of the founding fathers. They wanted the people's representatives to get together and work out compromise and consensus. Isolated Members voting from remote locations will further harm civility and undermine Congress' already weakening place in the Constitution's balance of power.

Mr. COLE. Thank you very much, Mr. Chairman.

The CHAIRMAN. For our first panel, I am happy to welcome the distinguished majority leader, Mr. Hoyer, and the ranking member of the House Administration Committee, Mr. Davis, both who are on the bipartisan task force to talk about these issues. I am delighted that both of you are here. We will begin with the distinguished majority leader.

STATEMENT OF THE HON. STENY H. HOYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. HOYER. Thank you very much, Mr. Chairman. Thank you, Mr. Cole, members of this committee.

I want to thank Rodney Davis and Tom Cole and my friend Kevin McCarthy. We sat together the first time with one of our members participating virtually. Zoe Lofgren was in California. And we met virtually the other two times that we met. I think we had open, substantive, thoughtful discussions, and I thank all of the participants in that.

We did not reach consensus. I think the two letters that were just introduced apparently reflect the basic difference of opinion that voting virtually is somehow inconsistent with the Constitution. I do not believe that is the case.

But let me start, Mr. Chairman, with a quote. The dogmas of the quiet past are inadequate to the stormy presence. The occasion is piled high with difficulty and we must rise with the occasion. As our case is new, so we must think anew and act anew. We must disenthrall ourselves and then we shall save our country. Abraham Lincoln, December 1, 1862.

I have served in this body starting May 19 for 40 years, and will be in my 41st year. Never have I experienced an environment that exists today. Nor do I believe that anybody alive in America has experienced such circumstances. And so as our case is new, we must act and think anew, as Abraham Lincoln said. The constitutional Framers expressly intended for the House to be closest to the American people and be their chief representative in government.

I, Speaker Pelosi, Leader McCarthy, and Leader McConnell all believe there is no substitute for meeting together, personally, individually, collectively, in committee, in the House of Representatives. However, if that is not possible, either because planes won't fly because there has been an attack on the satellite and the air traffic control system is down or because of a natural disaster that destroys much of the country or because of a national security attack as we had on 9/11, but on 9/11 we did not shut down America. We were not precluded from meetings. As a matter of fact, we came together that night and stood on the steps of the Senate and sang God Bless America.

But we have voluntarily shut down the country in many respects because health experts say it is essential to defeat this virus. And so we are meeting in an unnatural way in a very large committee room for a relatively small committee separated by at least 6 feet. We are doing that to accommodate the crisis that confronts us.

The Framers established this House in the very first article of the Constitution and gave it the power to legislate and conduct oversight of the executive branch. Never are those responsibilities

more critical than during times of crisis. We are now in such a crisis with COVID-19 infections still surging across the country and its economic impacts having led to more than 33 million Americans being unemployed.

We need to be about the people's business. The American people need their Representatives to be able to perform the full measure of their duties under our Constitution, which included committees holding hearings and markups and members debating and voting on the floor. Because of social and physical distancing measures currently in place to save lives and prevent the spread of COVID-19, it is unsafe for members to travel back and forth to Washington from their districts and risk exposing potentially thousands of people while in transit.

It is also unsafe to require thousands of House staff and Capitol Hill employees to commute to work while infections have not even reached their peak in the Washington metropolitan area. That is why we must—must—adopt the kind of virtual practices authorized by this resolution.

As the chairman pointed out at the beginning, of course the Founders did not contemplate the technology that is now available to us, which allows us to meet virtually, to see one another, to hear one another, to respond to one another virtually. Not in the same room but in the same box that we call an iPad or a computer or some other device that allows us to communicate in real time, essentially, in person virtually.

These include video and teleconference technologies currently used safely and effectively by millions of Americans, including the Senate and the Supreme Court. Ironically, you saw yesterday a virtual hearing held by the United States Senate. The chairman was not present. The witnesses were not present; Dr. Fauci, in particular. Rand Paul was in the room. Somewhat like a hybrid hearing that was discussed by the minority leader.

We provided for that in this rule. Including the Supreme Court of the United States, only nine people, who are conducting hearings and arguments virtually. The Supreme Court of the United States, the final word of what the law is in America. So that this is not a radical idea, this is not an idea that undermines the Constitution in any way or the character of this body.

The character of this body is the individual members elected, and the only way you can get here, by their constituents. And what their constituents want is not necessarily that they are in this chair or that chair. What they want them is to raise their voice, to protect their interest, to reflect their views.

And we live in an age where that can be done virtually without exposing others to risk or without exposing the members to risk or the press to risk or the witnesses to risk. That is what happened in the United States Senate yesterday and that is what the Supreme Court of the United States is trying to preclude. A new and radical change for the Supreme Court of the United States, in one sense. In another sense, exactly the same thing they do, they hear arguments, they ask questions, and they decide. Nothing radical about that. It is simply the medium rather than a horse, a car. Rather than a horse, a plane. Rather than a horse, a train, to get to the objective.

This resolution, as has been pointed out, would authorize committees to markup legislation remotely so we can prepare bills. That is what our duty is. We can hold hearings. We can do oversight. We can question witnesses on behalf of the 750,000 that each of us represents, give or take.

For those members who cannot safely return to Washington at this time, it allows proxy voting. Now, some of you have heard my comments. I think that is one way to do it and I think there are other ways to do it, and this rule provides to look at that. And I will tell you, as long as I am majority leader, we will do that in discussion, because we were—I think we had six people of goodwill in the room trying to figure out how do we do this.

For those members who cannot get here, we will do their proxy voting, a first step that authorizes the House to begin working on a remote voting system. Such a system would only be used during emergencies like this one. Let me stress that. In the 40 years I have been here, there is not an instance where I think this would be justified, until now. And we see it in the White House where the COVID virus came in. We are not fundamentally changing the way the House works. Let me be clear. We are not changing. There is no advantage to Democrats, no disadvantage to Republicans by using virtual technology. None. Zero. Zip.

All the rules that apply for the minority protections apply, and they should. This is not about getting advantage; this is about allowing the people's House and the people's Representatives in committee to work and work productively. What H. Res. 965 does is enable the House to meet this moment and do its job in full while we do our part to help prevent the spread of COVID-19, and ensure the safety of those who serve and work here on Capitol Hill.

While I was disappointed that we were unable to reach a bipartisan agreement on adopting virtual tools for the House, it was not for lack of trying on the part of Democrats and Republicans. And I want you to know, Mr. Chairman, the time when it was obvious we could not reach agreement, I called Mr. McCarthy and we had a very civil, quiet conversation. I said to him, Kevin, we cannot reach agreement. A, I don't believe, frankly, Kevin, what you are asking for for concurrence you would give to Nancy Pelosi if she were the minority leader. I want you to think about that, whether you would have given Nancy Pelosi the ability to veto your ability to act. I want you to honestly think about that.

So we could not agree on that, but it is not because we did not want to reach agreement. I wish Republicans would have joined us in this effort, and I hope they will join us on the floor in voting for this resolution, if it is included in the rule, as I think it will be.

So in closing, Mr. Chairman, I have a list of about eight or nine things that Mr. Cole and the staff and other Republicans suggested. There were good suggestions and you have included them in this rule. That was the right thing to do. This should not be about partisanship. This should be about, do we want this institution to have the capacity to meet at times of crisis?

Frankly, we didn't get there after 9/11. This ought to be impetus for us to get there, and we ought to all be committed that we would only use it in extraordinary circumstances. I don't believe there has been such a circumstance in the United States of America since

1918. Over 100 years ago. This may be once-in-a-century experience for our country. Let's pray that it doesn't happen again. But let us also pray that when it does, as Abraham Lincoln said, we will think anew and act anew so that we can do our job.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Mr. Davis.

STATEMENT OF THE HON. RODNEY DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. DAVIS of Illinois. Thank you, Mr. Chair, and thank you to Ranking Member Cole for allowing me to testify. It is always great to be here with my good friend, majority leader, Mr. Hoyer, and the rest of my colleagues on this committee.

This is an unprecedented proposal and it is going to fundamentally change the way that the House of Representatives can craft, consider, and vote on legislation. The processes that led to this hearing is unacceptable to me.

After a previous failed attempt to bring similar rules change package to the floor last month, we, on our side, were hopeful and optimistic, just like Leader Hoyer was, that the work of a bipartisan task force to get the House back to work would result in a genuine willingness toward bipartisan agreement. We Republicans on that task force offered a realistic framework and a plan to make responsible, measured, thorough reforms to get the entire House working again to perform our essential functions on behalf of the American people who elected us to represent them.

And thank you for including some of our suggestions in that proposal. As Leader Hoyer mentioned, there were others that we put forth in this framework and our suggestions. I would argue, Mr. Leader, we wouldn't have to offer Speaker Pelosi or minority leader Pelosi, in your example, concurrence because we wouldn't bring this proposal to the House. We would do it much differently. Our plan was dismissed out of hand by the Democratic majority with no alternative. It was not until yesterday, yesterday morning, with the release of H.R. 965—House Res. 965 that we saw any semblance of a plan, and in no way was it a product of bipartisanship or greater member input.

This resolution would dramatically overhaul the committee process, which is fundamental to producing legislation to now only allow for minimal input and consultation with the minority party.

Let's call it what it is. We are talking about a Member of Congress giving their voting privilege to someone else. There is legitimate constitutional uncertainty with what is being proposed, and it could call into question the validity of any legislation that proxy voting is used for.

I am sure that many of our peers are reviewing the proposed rules changes with the idea in mind that desperate times call for desperate measures. It is important to note that this is not the first time Congress has had to work through national emergencies, be it the civil war, Spanish flu pandemic, the two world wars, and after September 11th, this body continued to operate.

In fact, after 9/11, there was an exhaustive effort for years that would make sure that the House rules had a mechanism that

would allow the House to continue to function during catastrophic times. That effort took 3 years to implement. And I would like to remind members that as we sit here and contemplate changing 200-plus years of voting and committee precedent, we already have a product of those 3 years of bipartisan work.

We have rule XX, clause 5, which the Speaker could exercise and was crafted to allow the House to operate when impacted by a natural disaster, attack, contagion, or similar calamity rendering the Representatives incapable of attending the proceedings of the House. The changes to House floor and committee processes being proposed in this resolution are heavily dependent on the Clerk of the House's, the House Recording Studio's, and the House Information Resources' ability to execute and support these dramatic process changes.

I have confidence in the Clerk, CAO, and the professionals on their teams. However, it is unfair to them and puts the institution at risk by not first listening to them, mitigating risks, and testing the process extensively. These steps have been skipped.

To that point, I submit today a letter for the record to you, Mr. Chair, outlining important technical questions and concerns that must be addressed before the official virtual proceedings are conducted. I ask unanimous consent.

The CHAIRMAN. Without objection.

[The information follows:]

ZOE LOFGREN, CALIFORNIA
CHAIRPERSON

JAMIE RASKIN, MARYLAND
VICE CHAIRPERSON

SUSAN DAVIS, CALIFORNIA
G.K. BUTTERFIELD, NORTH CAROLINA
MARCIA FUDGE, OHIO
PETE AGUILAR, CALIFORNIA

JAMIE FLEET, STAFF DIRECTOR

Congress of the United States

House of Representatives

COMMITTEE ON HOUSE ADMINISTRATION

1309 Longworth House Office Building
Washington, D.C. 20515-6157

(202) 225-2061
<https://cha.house.gov>

RODNEY DAVIS, ILLINOIS
RANKING MINORITY MEMBER

MARK WALKER, NORTH CAROLINA
BARRY LOUDERMILK, GEORGIA

ONE HUNDRED SIXTEENTH CONGRESS

JEN DAULBY, MINORITY STAFF DIRECTOR

Honorable Jim McGovern
Chairman
Committee on Rules
H-312 The Capitol
Washington, D.C. 20515

May 14, 2020

Chairman McGovern,

H.Res. 965 as drafted gives significant authority to you as the Chairman of the House Rules Committee to publish guidance on how remote committee proceedings will be conducted. There are many technical and procedural issues that need to be considered. As such, I submit to you the following questions and points of consideration in altering the House Rules to allow for virtual proceedings, including committee hearings, markups, and depositions. In working to ensure the House upholds its institutional health and adheres to the centuries of precedent upon which its authority and legitimacy rests, we fear that too rapid of action to adopt virtual proceedings will result in irrecoverable, unintended consequences. We do believe that the House needs to return to business as soon as possible; the work of the House is essential not only to the legislative branch but to American democracy. However, we do not take such actions lightly and fully expect all aspects of any element of committee changes to be not only thoroughly developed but vetted and tested. As such, in addressing these points of concern we offer our services and partnership in working together to craft solutions to return the House to service, whether virtually or in person, to the American People, as soon as possible.

Below you will find listed our questions and points of concern that have yet been considered or addressed regarding the House's adoption of virtual proceedings.

HYBRID HEARINGS

Technological Requirements

Question 1: Will the House require a virtual platform and supporting applications to be FEDRAMP compliant? If so, what will the process be and who will the authority be for vetting and approving the platforms and applications to instill confidence among Members that cybersecurity concerns have been addressed?

Question 2: An essential aspect of in-person hearings is a Member's ability to view the reactions and actions of his/her fellow Members on the dais. Additionally, and just as

essential to a hearing, are the participants' ability to see who is 'present' at any given time. Virtual proceedings are capable of providing a substitute for these abilities by employing a multi-thumbnail viewing panel of all panelists at a hearing, commonly referred to as a 'brady-bunch' view. Is the House going to ensure that this viewing capability is a required function of all official committee business to ensure Member attendance, recognition, and interaction?

Question 3: Precise timing capabilities are essential for both fairness and record keeping. Thus far, no virtual platforms offer a built-in official timing application for use during committee proceedings. Whatever function is adopted to overcome this shortfall must be standardized across committees to ensure Member confidence and familiarity, as well as to ensure adequate recordkeeping by stenographers.

Question 4: Will the House require all committee proceedings to be livestreamed? Livestreaming hearings to the public is an essential element to maintain an open and transparent democracy. Prior to COVID-19, all House hearings that did not contain confidential information were open to the public to attend and were streamed on C-SPAN. To protect the integrity of virtual proceedings and to ensure that the House does not take steps backward in its commitment to public accessibility, all official committee business, including markups, must be livestreamed. To account for any security breaches or errors, a 15 second delay may be considered to protect House Members and sensitive information.

Question 5: Will a back-channel messaging application be adopted as a standard across the House virtual platform? As Members and staff are familiar with, off-the-record, constant, and reliable communication during a hearing is essential to support a Member. Virtual hearings introduce difficulties in achieving the same easily accessible communication and as a result Members, personal staff, and committee staff must be equipped with standardized messaging tools to overcome this challenge. These tools will be expected to foster easy communication from Member to Member, personal staff to Member, committee staff to Member, committee staff to personal staff, personal staff to personal staff, and vice versa. Whether the tools be an application of the virtual platform or provided through an additional program, they must be off-the-record, ensure privacy, and ensure that the content of messages is erased after the conclusion of the interaction.

Question 6: Will the House expand committee staffing and resources to allow committees to hire dedicated IT personnel to assist Members in real-time during proceedings? Similarly, will the House require that all official proceedings have an IT staffer promoted as a participant on the dais to immediately address all IT issues to ensure that all Members 'present' are able to participate? We deem it essential that Members receive immediate attention upon experiencing technical difficulties to ensure that their participation in the hearing or markup is not negatively affected in any way.

Question 7: Will the House offer a standardized, comprehensive training course and further advancement resources for Members to ensure they gain familiarity and achieve proficiency in the virtual platform and messaging applications? If so, what supporting office will be in charge of creating and distributing this training? Will the training be deemed 'mandatory,' similar to cybersecurity and workplace rights trainings? The

training course and additional resource materials should be developed in a nonpartisan way.

Question 8: Will the House work closely with the Office of the Clerk and the Government Printing Office to ensure that all official proceedings are conducted using a platform off of which an accurate transcript can be transcribed and that all materials provided will be done so in keeping with the current practices for producing official documents?

Question 9: Has the House closely partnered with the Chief Administrative Officer to ensure that the CAO's support IT services are sufficient to address all Members' needs? Similarly, has the House coordinated with the CAO regarding virtual platform readiness and on-hand resources needed to certify that multiple official proceedings can take place at the simultaneously?

Question 10: Will the House ensure that all Members are equipped with highspeed internet hotspots and WIFI to ensure no barriers to participation?

Procedural Requirements

Question 11: Will the House make it clear that virtual proceedings are only to be used in cases of extreme and extraordinary circumstances, and that if enacted will sunset upon a set deadline? The changes that the House is considering regarding its adoption of remote technology is not simply a change in rules, but rather a drastic change in the very nature of the House. The change should not be adopted as a new normal, nor as a new option for remote work that is on the table from here on out when the House faces a crisis. For over 230 years, the House has faced challenges, crisis, pandemics, and horrors. Never once has it shrunk in its duty to govern. We strongly encourage the House to uphold this integral aspect of the institution's legitimacy.

Question 12: Will the House respect individual Members' wishes to conduct business in-person? Should a member feel uncomfortable with the technology or oppose the House's adoption of virtual proceedings, will the House ensure that Members retain the ability to 'attend' all official proceedings in person?

Question 13: Will the House respect and adherence to current committee rules requiring a set quorum of Members to be 'present'? Quorum requirements of committees must still be adhered to and the House must leave it up to committees to alter their rules as they see fit to define whether or not virtual attendees should be counted toward an official quorum. Should virtual "attendance" be accepted to count toward a quorum, committees must enact requirements to ensure an adequate number of Members of the minority are present to conduct a bipartisan hearing.

Question 14: Should the House adopt a standardized platform on which to conduct virtual hearings, Member deliberation is an essential function that must not only be technologically supported but adjusted for in a way by which Members feel empowered and equipped. Dialogue and input from Members are vital to the committee process, as is livestreaming deliberations to the public to ensure an open and transparent committee

process. As a result, Member decorum and respect should be emphasized to the highest degree, the power to mute a participant should be reserved solely for unintended audio purposes, and recordings of proceedings should only be held from release due to nefarious intervention by a third party.

Question 15: Press access is vital to ensure transparency. How will the House substitute press access that was available in-person within the virtual platform? One recommendation is to reserve at least 10 percent of “seats” available on the hearing platform for members of the press. Both the majority and minority should be allowed to invite at least two members of the press in advance of the virtual proceedings.

Question 16: Similar to Question 3, adequate committee timing is essential for the procedural legitimacy of a hearing. Echoing the earlier sentiments expressed in Question 3, we reassert that a standardized timing tool be adopted by the House and made familiar to Members to ensure fairness, deliberation, and legitimacy of official virtual hearings.

Question 17: All Members reserve the right to submit documents for the record at any time throughout an official committee hearing, as well as during markups. The House has yet to assess a virtual platform that allows for the sharing of documents between participants (other than a share-screen mode, which does not fulfill the needs of Members to have full access to the document being discussed). How will the House address document sharing in a secure way that ensure access to the document in real time by all Members on the dais, personal staff, and committee staff?

VIRTUAL MARKUPS

Technological Requirements

Question 18: A Member’s ability to vote and the record of that vote are essential functions to ensure the legitimacy and transparency of the committee markup process. Will the House issue procedures to ensure the validity of markup votes performed virtually? How will such votes be confirmed and/or doubly authorized by the Member? How can the cybersecurity of these votes be reliable? What safeguards can the House put in place to ensure confidence in the virtual markup process? In House Resolution 756, the Clerk is directed to develop an online data base of all votes taken at the committee level, beginning with the 116th Congress. Will all virtual committee votes be included in this data base?

Question 19: The visualization of realtime markup language will drastically improve Member communication, understanding, and deliberation as committees work to adopt the markup process to a virtual platform. What steps are the House taking to adopt applications or programs to assist with the virtual markup process? How can these tools be used to increase transparency of the markup process (i.e.: use of standardized legislative format; all bills machine readable and text searchable.)?

Note: The questions and points expressed above in Questions 1-10 similarly apply to virtual markup proceedings. Although we do not re-list those questions and points here,

we do consider them as essential topics to be considered and addressed should the House adopt virtual mark-ups.

Procedural Requirements

Question 20: Similar to Question 18, how will House uphold the standards of legitimacy and transparency of voice votes during virtual committee markups? To ensure accountability, security, and confidence we recommend that the House strongly consider regulation requiring all virtual markup voice votes to occur in a format where all Members are visible on screen and that each Member confirms his/her vote (aye or nay) by typing it in the chat function to be visible by all Members, the Chair, and the Clerk.

Question 21: Similar to Question 17, Members' ability to submit amendments for consideration at the last minute is not only an essential element of a markup, but also a very common one. How will the House ensure that Members retain this power and that Members have a secure, efficient way of submitting last minute amendments for consideration and for the record? Although screen sharing is one option, it does not fulfill the need of other Members, committee staff, and the clerk gaining full access to the document to review and retain for records.

Question 22: Will the House institute strict guidance on when remote markups are acceptable and/or considered legitimate? As expressed in Question 11, the changes that the House is considering regarding its adoption of remote technology is not simply a change in rules, but rather a drastic change in the very nature of the House. Any changes to the committee markup process to adopt it to a virtual platform should not be adopted as a new normal, nor as a new option for remote work that is on the table from here on out when the House faces a crisis. We strongly encourage the House to uphold this integral aspect of the institution's legitimacy.

Note: The questions and points expressed above in Questions 11-17 similarly apply to virtual markup proceedings. Although we do not re-list those questions and points here, we do consider them as essential topics to be considered and addressed should the House adopt virtual mark-ups and wish to adhere to House procedural precedent.

VIRTUAL DEPOSITIONS

Technological Requirements

Question 23: In alignment with what has been described in Question 4, Will the House require all virtual committee depositions to be livestreamed? Livestreaming depositions to the public is essential in maintaining transparency and accountability. It should be required that all depositions, not otherwise classified, be viewable to the public similar to the recommended action for livestreamed committee hearings and markups. A 15-second delay may be considered to protect House Members and information, and account for external threats.

Question 24: As expressed in Question 1, will all House depositions be conducted on a platform that is FEDRAMP compliant? If so, will only one virtual platform be assessed and approved as a deposition platform?

Note: The questions and points expressed above in Questions 1-10 similarly apply to a virtual deposition. Although we do not re-list those questions and points here, we do consider them as essential topics to be considered and addressed should the House adopt virtual depositions and wish to adhere to House procedural precedent.

Procedural Requirements

Question 25: Prior to COVID-19, depositions conducted in person introduced challenges in Member attendance and attentiveness, often due to both the political nature and length of the proceedings. Should depositions be adapted to a virtual platform, the challenges could be accentuated. In order to protect Member authority and prevent depositions from becoming staff led, will the House consider a requirement establishing a minimum of Member participation? For example, in a virtual deposition, should Members be required to ask three quarters of all questions on camera, live, on a platform that allows for a multi-thumbnail view of all Members on the “dais”?

Question 26: Should staff be allowed to ask questions during a deposition, will the House require all participating staff to be visible on camera to verify their identity?

Question 27: Transparency and press accessibility are essential to depositions. What rules will the House establish regarding the livestreaming of depositions?

Sincerely,

Rodney Davis

Mr. DAVIS of Illinois. The House is on the receiving end of 1.6 billion unauthorized scams, probes, and malicious attempted network connections per month. After broadcasting to the world our intention to allow members to delegate their votes via email and moving committee activity to virtual platforms, I would expect that number to increase. I want to be clear. I am not opposed to exploring, and Leader Hoyer and everyone on the task force can tell you, I and the others are not opposed to exploring commonsense reforms to the way the House operates.

In fact, you will find no bigger advocate in Congress for making improvements. That is why I asked to serve on the House Administration Committee. That is why I have invested countless hours working on the Select Committee on Modernization, to try and move the ball forward. It is also why I was excited to work on crafting this bipartisan emergency response proposal on the bipartisan task force. Disappointed, as you know, but for weeks we have put forward roadmaps in solutions to open the House in a way that prioritizes member and staff safety, as well as institutional legitimacy, but they were dismissed out of hand.

I ask you, Mr. Chairman, based on your comments earlier, what has changed since just a few short weeks ago when the Committee on Rules released a report on March 23 that could be viewed as the antithesis of what is being put forth today. I agree with each of the statements that you made and I believe that they hold no less weight on May 14 than they did only 7 weeks ago on March 23.

In closing, I want to encourage all of us to take a step back and admire our institution for its strength, agility, and the ability to be closest to the very people we represent, even during difficult times. I also want to remind us how fragile it is. Our rules are easy to change. A break in precedent can unravel generations of institutional reforms and institutional norms. Former member Bob Walker, who served for 20 years in this chamber and was one of the chief architects in the institutional reforms implemented after the 1994 election, recently issued the warning to me that precedent creates process.

What we are considering today and the process through which it has been drafted is being considered is unprecedented. We are not here debating rule changes. We are here debating what kind of institution we want to be and the example we want to set for the American people and the rest of the world.

If we approve H. Res. 965, we are creating a new precedent that will forever change the House processes, threaten legitimacy of members' votes, and open a Pandora's box of unnecessary constitutional risks. Tragically, this time should have been an era of bipartisanship, like it was previous few times we have come together just in the last few weeks. Instead, we are debating a member management proposal for folks who have a fundamental view of the role and responsibilities of Congress that is much different than mine and many of us have ever envisioned.

Thank you, Mr. Chair. And I yield back.

The CHAIRMAN. Thank you very much.

And I would simply say, again, that I regret that we couldn't come together on this, but we are looking at the current moment very differently. And, again, we saw your proposal that was re-

leased to the press that we read about—we first found out about it that way, but it doesn't address the challenges that we face right now.

This is the Rules Committee, right? We are one of the smallest committees in Congress and here we are taking up the entire Ways and Means committee room, which is one of the biggest committee rooms in Congress. What do you do with the Transportation Committee and the Appropriations Committee, which, you know, are significantly larger? Some have suggested that maybe they can meet in the auditorium or maybe on the House floor, one at a time. We have a huge amount of work to do.

In addition to responding to this crisis and trying to figure out how to get the economy back on its feet again, we have must-pass bills that we need to get done, the defense authorization bill, appropriations bills. I mean—and the fact that we cannot function, our committee process just literally can't function the way it should if we are going to follow CDC guidelines, that is problematic. So what do we do? We don't meet? We don't address certain issues that need to be addressed, number one.

Number two, look, I don't think some of my friends on the Republican side believe as we do that the situation right now is such that some members cannot come back. There are transportation challenges. Some members represent districts that are hot spots. And then there is the whole issue that we could be asymptomatic carriers of the disease and we are coming back here and mingling with our staff, Capitol Police, the people who maintain this campus. I mean, all those issues need to be considered.

And at the end of our process, the two suggestions that the distinguished minority leader put forward was, one, that he wanted concurrence on whether or not we could implement a process of operating remotely. And so I said, okay, well, would you give us—would you concur? And his response was no.

So all that we are talking about here, by the way, which is a response to not just Democratic members, Mr. Davis, it is also in response to Republican members who have reached out to us, you know, that somehow we need to figure out a way to deal and to operate during pandemics. But basically, what the minority leader wanted was the ability to veto something and he would use that veto to make sure we don't proceed forward.

And then his alternative, which I think incorporates some of the things that are in the press release that you guys released, was that we should operate like the White House and we all should get tested. We all should move to the front of the line. We are all special enough that even though our constituents can't get tests—people who work in hospitals, first responders, people who are working in food pantries and homeless shelters, who, quite frankly, should be tested—that Congress all come back and every time we come into session we will get tested.

I don't know what the reaction would be in the minority leader's district, but in my district, people think that is tone deaf and think it's wrong. We are not super special, and we shouldn't move to the front of the line. And so that was the long and short of it.

And, again, I don't take this lightly at all. I wish we were not having this discussion. I wish we were meeting as usual and we

were able to fight with each other as usual and be able to have high-spirited conversations as usual and be able to move bills forward as usual, but we just can't. Now, I hope that that is short-lived. I hope that this ends really quickly. Maybe it will end so quickly that we don't even have to utilize any of this, but then if you listen to the head of the CDC and you listen to other medical experts, they are warning about the fall. And so what happens if things get worse? I mean, much worse than they are right now. What do we do? Conduct business in the same fashion that we always conduct business? Ignore the advice of medical experts?

And I appreciate this issue of precedence. I mean, believe me, we have talked to constitutional experts, I have talked to people who have studied the institution. I am very reluctant to make changes that I don't think are totally warranted. But the gentleman referred to the change that was implemented after 9/11 when the Republicans were in charge of the House. And in 2005, you changed the rules for a provisional quorum which would allow in the extreme two members to constitute a quorum.

Now, the Constitution defines a quorum as the majority of the membership, but under the rules change that was done back then, I mean, you literally could have two members constitute a quorum. I don't think that is constitutional, but nonetheless, that was the plan that was put forward. And yeah, it may have taken a long time to put forward, but I don't really think it was a very good plan.

And the issue right now for all of us is that this discussion is not about what ifs. What if we had a pandemic? What if this happened? We are living it right now. And we all hope and pray that it is winding down and that it will stay wound down. But if we are wrong and this comes back and we are not prepared, then shame on us, because we have a lot to do.

And, by the way, we have come together in a bipartisan way on a number of packages that have become law in which we have literally appropriated, the House in a bipartisan way, the Senate in a bipartisan way, has appropriated trillions of dollars to help respond to this health crisis and to help try to protect our economy.

We need to do oversight. We need to make sure the money is being spent the way we want it to be spent. I mean, that is one of our jobs. And if committees cannot meet because of this pandemic, where they have to wait their turn, you know, because we don't have rooms big enough here for people to meet and follow CDC guidelines, that is a dereliction of our duty. So, I appreciate all your concerns.

And let me just—I want to ask unanimous consent to submit to the record a letter from Erwin Chemerinsky, the renowned constitutional expert and dean of the Berkeley School of Law, discussing the view that the remote voting process we are considering today would be constitutional. And in his letter, the dean states: The Constitution bestows on each House of Congress broad discretion to determine the rules of its own proceedings. This authority is expansive and would include the ability to adopt a rule to permit proxy voting. Nothing in the Constitution specifies otherwise. Moreover, if this were challenged in court, it is very likely that the case would be dismissed as a political question. The Supreme Court

has ruled that challenges to the internal operation of Congress are not justiciable in the Federal courts. Indeed, I have written the court often, quote, has held that congressional judgments pertaining to its internal governance should not be reviewed by the Federal judiciary.

[The information follows:]

May 13, 2020

Chairman McGovern and Ranking Member Cole
House Rules Committee
United States House of Representatives
H-312, The Capitol
Washington DC 20515

Dear Chairman McGovern and Ranking Member Cole,

I have been asked for my view as to whether the House of Representatives could constitutionally adopt a rule to permit remote voting by proxy. As explained below, I believe that this would be constitutional and it is very unlikely that any court would invalidate such a rule, especially in light of the current public health emergency.

My understanding is that the system of remote voting by proxy that is being considered would have some key features:

- Low-tech remote voting process through proxy voting
- Some number of Members would be present on the Floor for debate and in-Chamber voting
- Proxy would be used to establish a quorum and to register the yeas/nays
- The proxy holder would be another Member of the House
- The proxy holder would have NO discretion on the vote. Instead, the proxy holder would be required (through the rule and accompanying regulations) to cast the vote in accordance with the specific and exact instruction from the Member.

The Constitution bestows on each House of Congress broad discretion to determine the rules for its own proceedings. Article I, section 5 of the Constitution says: "Each House may determine the Rules of its proceedings." This authority is expansive and would include the ability to adopt a rule to permit proxy voting. Nothing in the Constitution specifies otherwise.

Moreover, if this were challenged in court, it is very likely that the case would be dismissed as a political question. The Supreme Court has ruled that challenges to the internal operation of Congress are not justiciable in the federal courts. *See Field v. Clark*, 143 U.S. 649 (1892). Indeed, I have written, the Court often "has held that congressional judgments pertaining to its

internal governance should not be reviewed by the federal judiciary.” Erwin Chemerinsky, Constitutional Law: Principles and Policies §2.8.5 (6th ed. 2019).

Especially in the context of the current public health emergency, it is highly unlikely that any court would review and invalidate the procedures adopted by the House of Representatives that would allow it to conduct its business without endangering the health of its members and its staff. Every branch of government is devising new procedures to accomplish this. The Supreme Court, for example, will conduct oral arguments by telephone for the first time in its history. I am sure that the rules will ensure that the votes cast by proxy are accurate and carefully recorded.

I hope that this is helpful. Please do not hesitate to let me know if I can be of further assistance.

Sincerely,

s/

Erwin Chemerinsky

And I also ask unanimous consent to submit to the record a May 5 opinion piece published in the Hill from Sai Prakash, a constitutional law professor from the University of Virginia and former clerk to the Supreme Court Justice Antonin Scalia. In his piece, Professor Prakash said, I quote: The more general point is that if legislators are monitoring proceedings in Congress online and can vote remotely, they are in attendance and can be present for quorums. What is good for the President and the Supreme Court must be good for Congress.

And I ask that his letter be part of the record.
I would yield to the gentleman from Oklahoma.
[The information follows:]



One virtue of a virtual Congress

The Hill

Saikrishna Prakash

May 5, 2020

The need for social distancing has led to new demands for distant voting. With the coronavirus in the air, Congress is awash with proposals to allow senators and representatives to cast votes away from the chamber floors on Capitol Hill. It is true that desperate times call for desperate measures, but however extreme this reform may seem, remote voting would indeed be allowed under the Constitution. This new practice could also lead to the reform of one regrettable habit of the legislative branch.

The Framers likely assumed that members of the chambers would gather in a single room in order to conduct business. References to “assemble” and “attendance” in the Constitution suggest as much. Congress could easily satisfy this narrow reading of these terms if each chamber met in cavernous spaces. For instance, the Senate could meet in the baseball stadium where the Washington Nationals play, while the House could gather on the football field where the Washington Redskins play. Then legislators could easily sit several feet apart as they work.

But the chambers need not be so constrained. Laws can have meaning and serve purposes without being tied to the technology of a particular era. For instance, modern presidents have signed legislation by autopen, even though this technology is somewhat new. The justification for this is that so long as the president makes a decision about whether to approve a bill, the mechanics of putting pen to parchment are irrelevant. The same holds true for the Supreme Court. The justices have reached decisions by phone, sometimes hundreds of miles away from Washington. Six justices are necessary to conduct business, and they have concluded that voting by phone on important matters satisfies that requirement.

Congress could do something similar. The Framers perhaps demanded no more than for legislators to debate and collectively reach decisions in real time. The

internet permits that live discussion and passing laws, either by voice vote or by roll call. With the advent of technology, one chamber can “assemble” virtually on Zoom, while legislators can also attend meetings in Google. A chamber can sit to conduct business online.

The more general point is that if legislators are monitoring proceedings in Congress online and can vote remotely, they are in “attendance” and can be present for quorums. What is good for the president and the Supreme Court must be good for Congress. There are positives and negatives of remote voting, so here are two potential disadvantages.

First, Congress will no longer have the excuse of being unable to conduct business when members go back to their constituencies. What was once a part time assembly may become a full time legislature, where leaders call votes during such inconvenient times for members. Many people do wish that Congress would return to its roots as a part time institution. To quote Will Rogers, “This country has come to feel the same when Congress is in session as when the baby gets hold of a hammer.”

Second, though legislators do not have to pay attention to floor debates even when they are physically present, one might suppose that they will get more distracted if they have two browsers open, one trained on the proceedings in Congress and one centered on Sunday Night Football. A debate on a motion to recommit would suffer compared to a drive down the field in the final minute of the fourth quarter.

But there would be one positive that overwhelms these drawbacks. Last week, six members exercised the collective authority of the Senate and passed the \$484 billion appropriation. Though the Constitution declares that a majority of each chamber would be a quorum to do business, the Senate had nothing like a quorum for this vote. Under current practices, however, both chambers assume a quorum, an assumption that can be overcome only if some legislators will call for it.

That assumption is almost as mistaken as supposing that lobbyists exist to further the public good. The Constitution decrees that the chambers can pass a bill only if there is a quorum. Members cannot just avert their gaze from this violation of the Constitution. The minimum mandate for passing legislation is not waivable. To pass legislation in a chamber, the presence of at least a majority of the voting members is required.

With a move to virtual sessions, Congress could cut the embarrassment of a handful of legislators passing legislation. If bills are uncontroversial, the chambers can meet online, and the majority in each can pass them. All in all, the move to remote voting could generate a salutary reform and also eliminate at least one excrescence of the Constitution.

###

Link: <https://thehill.com/opinion/judiciary/496147-one-virtue-of-a-virtual-congress>

Mr. COLE. Thank you very much, Mr. Chairman. And I want to thank you and your opening remarks, for the tone, the tenor you set. Appreciate it. Very much same thing with our two witnesses here that I have had the great pleasure of working with on the ad hoc committee that the Speaker appointed. And I agree very much with what the majority leader had to say. It was a good exercise and one that there was good give and take. We didn't get as far as we would like, but there were certainly some areas of agreement, and I think it was taken seriously by everybody.

Mr. Leader, my first question is to you. I see two changes that Republicans requested as part of our task force negotiations, the prohibition on closed or executive sessions and a limitation on the number of proxies for any other members, but I don't see other changes that are in there. Could you tell us when and how those would be incorporated?

Mr. HOYER. Committees are required to use software platforms that the chief administrative officer recommends, which is, I think, a suggestion that you made. Actually, I think Mr. Davis made. Committees will not be allowed to hold closed executive sessions. As you know, if you are going into closed executive session, you have to recess and you proceed only with present members, not virtually present, but present.

Committees have the option to hold hybrid hearings, which was one of the first suggestions that Mr. McCarthy made. Committees are required to hold two virtual hearings to allow members to test the software. That was, I think, something that was sort of agreed to, but you were concerned about—not you personally, but on your side, was it going to work? So that is one thing we think that was a good suggestion and we have tried to incorporate.

Twenty-four hours' notice before any final passage votes during this period to give members time to secure proxies if they haven't designated one yet. I am not sure that was specifically a Republican proposal, but—chairs are required to be cognizant of time zones so some chair doesn't schedule a 9 o'clock meeting and disadvantage the people who are on the West Coast. They would have to come in the day before—well, if they are not coming, then virtual. That was a suggestion that was made.

Committees are required to provide a list of individuals with participatory access to the virtual hearing platform to the ranking member 24 hours prior to the hearing to the extent practical. And lastly, the Rules Committee will issue uniform regulations on enforcing decorum in a virtual setting.

Where we disagreed, we think, was—and I think you expressed it at the beginning and the two constitutional scholars differed substantively. And I think, frankly, that is where we have a substantive difference, because I believe that being virtually present and being present is essentially the same thing in the constitutional consequences of that presence. Because I can vote aye here and I can vote aye a thousand miles away, and it has the same representation of my constituents. It is just—it is transmitted in a different way. It was somewhat controversial when we went from standing on the floor and saying aye or nay, which is a very dramatic kind of presentation, to the electronic voting.

Now, one thing that happened to the electronic voting, since I have been here, I don't know whether any of you experienced, the electronic voting machine broke down and so we had to go back to the aye/nay. And it took a long time. And the next day, the machine was fixed and we went back to that.

When we, frankly, went to television, it was—members were nervous about that. It was a real change and, you know, is it going to change the character of the House? Are we going to speak longer? Are we going to take just political positions as opposed to substantive positions? So they were substantive changes.

Where I think we disagree, and I want to say this strongly and I think my reputation on your side of the aisle is I try to be fair to both sides. I do not believe this changes in any way the rights of the minority, nor do I believe it in any way enhances the rights of the majority. I think it is an even playing field on both sides, no rules change.

Let me give you a rules change that your side made, not in this body, and both sides made this change because they were frustrated. Mr. Reid initially made a change that wouldn't take 60 votes to approve judges. However, those judges were not the final say. Mr. McConnell changed the rule and the Republicans which substantially disadvantaged the Democrats and a bipartisan choice of Supreme Court Justices because could be made on a partisan level 51 votes. That was a very substantive change. It was made. And it did, in fact, change the influence and the ability of the minority, in this case, a 47 vote minority, to impact the outcome.

This House change, though, Mr. Cole, and I have great respect for you, as you know, and we have a great relationship and we both served on the Appropriations Committee, so we have a lot in common. And I really think you are a very thoughtful voice on your side of the aisle and in the Congress. I don't think this changes your rights and privileges at all. And if it does, I will be the first to say, no, we have to make sure it does not, either in cross-examining witnesses, calling witnesses, voting. You are going to have the same number of votes—now some people may be absent, but some people are absent when you are physically present, as you have now.

This is not intent—what this is intended to do solely is to assure that the Congress is not sidelined because of an event that neither one of us are responsible for. There is no fault here. It is a circumstance we confront, and this is an attempt to confront it so that Congress is not sidelined.

Now, let me point out that we have come here, as you pointed out, three times. And we have come here because we need to do the people's business, and we are going to do the people's business and we are going to do the people's business tomorrow. Some of us will agree that it is a good way or some of us are going to say, no, that is not the way we ought to go. That is the process. We will come here, but why when we have the technology that allows us to do it virtually do we put lives at risk. Not only here, you are going to go back to Oklahoma at some point in time and you are going to deal with the folks in Oklahoma and you are going to come from a hot spot. Now, hopefully, you will not have anything to transmit, but we know that that is possible. And if we have the

ability to do something virtually which does not in any way denigrate our democracy, our institution, or the rights of the minority party or enhance the rights of the majority party, why don't we do it? And that is why I am a proponent of this use of technology.

Mr. COLE. Thank you, Mr. Majority Leader.

Let me make two points quickly in response. Number one, a lot of the measures you mentioned that are incorporated are not actually in the resolution. I assume they will come in the guidance, and I certainly trust my chairman to that, but I wanted to get that on the record. But many of those points aren't in the resolution yet. Hopefully they will be in the guidance. We haven't seen that.

The CHAIRMAN. If the gentleman will yield?

Mr. COLE. I certainly yield to the chairman.

The CHAIRMAN. I pledge to the gentleman that we will have that guidance available to him before this comes to the floor. We will certainly consult with him before we submit it. Obviously, the only thing that probably would not be in the guidance is, you know, what future technologies might exist that might be applicable to dealing with a situation like this. But a lot of the stuff that the gentleman has referred to will be taken care of. But we will have a consultation.

Mr. COLE. I appreciate that.

Mr. Majority Leader.

Mr. HOYER. Let me say something. On our side of the aisle, sometimes we are frustrated with your chairman and we get frustrated when your chairman says, no, that is not fair, we told him we would get this, that, and the other. And we say, come on, Jim, we got to get this done. No, we have to be fair. So you have got a chairman of the committee who on our side is perceived as leaning over backwards to make sure that he and his committee is perceived as fair.

And I want you to know, Mr. Cole, as we go through adopting this technology and using this technology if, in fact, we get there, as the chairman said, I want to assure you, I will be the first one, I want to hear from you this is not fair to Republicans to say, well, let's make it fair.

Mr. COLE. And I say this facetiously, obviously, but there is another thing we agree on. We both chair the Danish—co-chair the Danish Caucus and we both occasionally get frustrated with Chairman McGovern. So there is bipartisanship right there.

The CHAIRMAN. I like frustration.

Mr. COLE. You like frustration, yes, sir.

Let me make another point, if I may, and I appreciate very much what you said, Mr. Chairman. I look forward to working collectively with you. And I don't have any doubt, Mr. Leader, about your concern about trying to be fair here and trying to not disadvantage anybody either individually or in a partisan sense. I accept that without reservation.

Just so you know and so I am clear, my bigger concerns are about the nature of the institution itself. I know you share many of those concerns, so I didn't want you to have the impression that I thought you were trying to tilt the table one way or the other to your advantage. I don't. I just worry very much about the way this place works. I worry very much about members being in bubbles

back in their own districts where they basically talk to people just like them. A lot of people only talk to people with different political opinions when they are here and they sort of have to because the person has a vote and has a say. I think that is a good thing about the institution, and I think they also develop a lot of personal relationships that sort of provide the manner and bipartisanship, sometimes regional alliances, things like that which I think are very hard to do remotely. I know you share those concerns. But just so you know that is what I would consider.

Now, next question, if I may, the resolution before us today allows for the use of remote voting upon the certification of Chairwoman Lofgren. This was something we really never talked about in our meetings. It was brought up before the task force, and I am, frankly, a little surprised to see it here. Could you explain why you felt the need to include this? And then I would ask you to follow up, because I do think, as I suggested in my opening remarks, this is a lot of power in one person's hands. I don't think that is the intent. And, again, I have a lot of trust for the member in question, a lot of respect for, but have you considered or would you consider, once she comes to a decision, maybe opening up and having the whole House have a look at that so that we didn't move forward technologically really on the basis of just one person, that there are other sets of eyes on it if you will?

Mr. HOYER. Let me say that I know that the Speaker—and she indicated that, when Mr. McCarthy said, I may be open to proxies but not now, and she withdrew the proposal at the last time we met. She set up a task force to discuss it.

Now, to your specific question, I think that is in largely at my instance. And the reason it is in is because I think there are better ways to have a direct conversation with that camera. Me, not somebody I—not Rodney Davis, who I give my proxy to.

And, by the way, as we know, proxies are used regularly in the United States Senate today. We no longer use them in the House. I think that was a good decision that the Republicans made.

When I first came here, the chairman of my committee—I was on two committees—sometimes had 10 or 12 or 15 proxies in his pocket that were undesignated. This proxy is a very specific, you vote “aye” on this, “nay” on this. And it is clearly the person's opinion. It is not the chairman or somebody else using a large number of proxies.

The limit, as you know, was your side's concern. We shared that view. You couldn't go too low, because you might have to have somebody with a lot of proxies under those circumstances.

But I assure you that any change that we make we will do with discussion, serious and fair consideration. And I think we all have to have a sense that the technology works.

For instance, let me give you my example, which—I wrote an article as well, as you know, and you probably read it, where I said my first initial recommendation to the chairman was, “Let's use FaceTime.” Because you put the camera up, you see my face, and you see me say “aye” or “nay.” It is not somebody else. It is not an instruction I gave to somebody. I do it.

I happen to think that, personally, is preferable. But I think what the Rules Committee has suggested is an interim step, which

is now being used in the United States Senate by committees, and that I think will reflect—because they have carefully written it so you have to have specific instructions. The person has to announce first, “I am casting my vote for Tom Cole.” Then they cast their vote for Tom Cole. And it is as if Tom Cole were present, because it is going to be listed, you voted “aye” or “nay.”

So the answer to your question is—I certainly, I think, can speak for the Speaker that we intend to make any of these changes—and I know this is the chairman’s view as well—after discussion and careful and thoughtful and bipartisan discussion for the institution—not for either party, but for the institution.

Mr. COLE. Thank you very much, Mr. Leader.

If I can, I will go to Mr. Davis.

In the task force that we were all on, we had a roundtable discussion with the Office of the Clerk and the Parliamentarian about the broader issue of remote voting. In those conversations, the Clerk consistently highlighted the need to be able to certify a proxy’s validity. Has your committee had any conversations with the Clerk’s Office on exactly how they would do that?

Mr. DAVIS of Illinois. Not that I am aware of.

Mr. COLE. Okay. So we are sort of moving forward without an agreed-upon system of how we would actually verify the proxy.

Also—

Mr. DAVIS of Illinois. That is—

Mr. COLE. Excuse me. Go ahead.

Mr. DAVIS of Illinois. And that is why in my opening remarks I mentioned I think we need to take into consideration the professional House staff who are going to be tasked with implementing these new plans and proposals.

And one other thing I would like to mention is, I think there is a big difference between proxy voting and remote voting and remote hearings. And kind of equating them all together is something that I don’t think we should do in this institution. I think they all have very different rules and aspects and potential problems that can be played in the House.

Mr. COLE. Well, I know my friend, the chairman’s intention here is to make sure that proxies are very narrowly used, and I commend him for that. I think it is the right thing to do.

Do you have any suggestions that would, you know, make sure that that proxy was actually cast by who was intended, used in the manner in which it was intended?

Because, again, I appreciate the sentiment that the majority expressed here, that they want to really narrowly curtail this so we don’t have what we had at the committee level that my friend, the Leader, referred to in the past—that is, people literally casting votes without any consultation with the Member whose vote that actually is.

Mr. DAVIS of Illinois. Well, I have a problem with the proxy process as a whole because of the process being corrupted under 40—you know, we were almost 40 years of one-party rule in the House.

And, frankly, after speaking to former Members, like Bob Walker, who helped institute the reforms that got rid of the proxy process at the committee level, you know, he even joked about how the former chairs, now ranking members, laughed because the new Re-

publican chairs took away their own power. And it was a process that they could not believe that the new majority would give up. But I think it was the right thing to do.

And, as Mr. Walker said, you know, this is a new precedent. And while I appreciate the work of Chairman McGovern and Leader Hoyer and Chairperson Lofgren in trying to limit this proxy process, I think it is a process that has been shown in this institution to have been corrupted in the past. And it may be years from now—it may not be this Congress, it may not be next Congress, but it could be three, four, Congresses later, and we go back to that same corrupted process. And I don't think it is our job to allow this to move forward when we know it has been abused in the past.

The CHAIRMAN. Mr. Cole, could you—

Mr. COLE. Yeah.

The CHAIRMAN. Would you mind yielding for a second?

Mr. COLE. I would certainly yield to the chairman.

The CHAIRMAN. So, I mean, there is the proxy voting of the past, which we would all agree was not a good standard, and I think the Republican majority, when they got rid of it, did the right thing. Because the way it worked back then was that the chair would have a bunch of proxies in his or her pocket and vote however the chair saw fit without consulting with the Member.

That is not the way this should work. And that is not what we are talking about is.

What we are talking about is that, if you want to give me your proxy, you have to indicate in writing how you want me to vote on every single vote. And then it will be announced publicly, how you voted, on the House floor. And if Jim McGovern had Rodney Davis's proxy and I voted, you know, contrary to the way you wanted to, it would be announced. And there would be a period of time, if I somehow abused my power, for it to be corrected.

So the reason we suggested this is because it is the approach that I think, you know, is the—let's put it, it is a low-tech approach that can't be screwed around with, that can be transparent, that the Member's vote could be cast the way he or she wanted it to be.

The problem with FaceTime and some other stuff right now is we have all been on calls where people freeze, you can't get through. You know, the technology out there may be such that we can actually go in a direction that Mr. Hoyer wants us to go. That is fine. But, you know, we need to test these things. We need to make sure that we are moving in a way that makes sense and that is foolproof, as foolproof as anything can be.

So to compare what we are trying to do to the old days, that is just not accurate in any way, shape, or form. And the idea that somehow the process could be corrupted—the safeguards that are being built into this, you know, unless a Member is not paying attention, it just can't happen. So I just reject that comparison to the old days, because that is not what it is.

And the gentleman knows that. We have talked about this time and time again. And I think we want to have a process with integrity, a process where there could be as few errors as possible in bringing this forward. And, again, as we learn more, there may be better ways to do it.

And, again, my hope is—by the way, we have also had multiple conversations with the Clerk, our staff has. I think we feel confident that this process can move forward.

So if there are better ways to do it, you know, this resolution says, let's look at it. But, in the meantime, let's—you know, the idea of just dragging this out forever and ever and ever in the middle of a pandemic doesn't make a lot of sense.

I thank the gentleman for his indulgence. I yield back.

Mr. COLE. It is certainly my privilege, Mr. Chairman.

Although I will say again that, if you actually look at the resolution, it is pretty specific about assigning; it is not very specific about voting. And so that is an area that I—again, I don't doubt my friend's intent. I think that is an area that we need to look at very carefully.

Mr. DAVIS of Illinois. Mr. Cole, would—

Mr. COLE. Yes, certainly.

Mr. DAVIS of Illinois [continuing]. You yield so I can respond to—

Mr. COLE. Yes, I would certainly yield to you, my friend.

Mr. DAVIS of Illinois. Look, I appreciate the work that was put together in a bipartisan way on our task force. I am glad you incorporated some of our suggestions. I don't see them as much as concessions as I see them as commonsense reforms that should have been in anyone's proposal.

The proxy process being instituted in the midst of a pandemic or whenever has a potential to be abused once again. And I worry less about—Mr. Chair, with all due respect, I worry less about the process being corrupted once the vote is in the hands of your proxy and more so, how did that proxy get to that person in the first place? What are the discussions before that proxy is offered? Why is that person even offering that proxy? And could that process be abused? And you and I both know, Mr. Chair, it could be.

But there is a big difference between proxy voting and remote voting and also remote hearings. And our plan that Mr. Cole submitted for the record laid out, I believe, a very commonsense approach that gets us to a point where Congress can work, just like essential workers are working throughout this country every day.

My wife is a nurse. She gets up, she goes to work at a facility that is treating COVID patients in the building right next to where her office is. She is in and out of that building. She doesn't quarantine herself when she gets home every night. She comes home knowing she followed the proper protocol and the guidelines to make sure that she mitigated the risk of her picking up the virus.

We have shown here that we can adapt in a very bipartisan way to do that. And we offered the opportunity to implement hearings—remote hearings, hybrid hearings. Let's test it. As you said, Mr. Chair, let's test the process.

But let's not kid ourselves. What you are proposing today does leave the minority out. It gives unprecedented power to you, as the chair of this committee, when determining how and when a—to determine all regulations for all House remote proceedings. It comes directly from you. It doesn't say you have to consult with the ranking member of your committee. You, solely, have the authority to do this, Mr. Chair.

And that takes away our ability, as minority Members—and, frankly, any rank-and-file Member on either party does not have the authority to work with you. This is something that you will be in charge of, adapting committee proceedings to a virtual platform. And it will be the largest change to the House processes and precedent in modern history. I think we do deserve our voices to be heard.

It also gives unprecedented power to just the chairperson of House Administration. It doesn't say she has to consult with me, the ranking member, when determining what type of technology to choose and implement before putting forth remote voting on the House floor.

Remote voting is much different than proxy voting. That allows somebody to sit at home and cast a vote. And, yes, there is technology, Mr. Chair, that could allow that to happen, but, in the end, why do we have one person, in the majority party, determining what technology to use?

The CHAIRMAN. Well—

Mr. DAVIS of Illinois. We don't have—hey, let me finish real quick, and I will yield back.

But think about this. In modern congressional history, we have had majorities switch a lot more often than 40 years up until 1994 and 1995. Now, when this switches, if I am the chair of House Administration, do I then unilaterally get to change the process that was selected unilaterally by your majority on a remote voting process?

You can consult, but—

The CHAIRMAN. You just said—you just said—

Mr. DAVIS of Illinois [continuing]. You don't give us—

The CHAIRMAN. You just said that the—

Mr. DAVIS of Illinois. But there is nothing that forces you to consult or concur.

The CHAIRMAN. Excuse me. You just said that the chair of the House Administration Committee is not required to consult with you. Go to page 11 of the bill.

It says here: "The Chair of the Committee on House Administration, in consultation with the Ranking Minority Member, shall study the feasibility of using technology to conduct remote voting in the House, and shall provide certification in the House upon a determination that operable and secure technology exists to conduct remote voting in the House."

So what you just stated was incorrect. It is in the resolution.

Mr. DAVIS of Illinois. Well, I certainly hope—I certainly hope that—

The CHAIRMAN. And I personally—

Mr. DAVIS of Illinois. I certainly hope that consulting, Mr. Chair, is taken into consideration a lot more so than the consultation that we provided in a very bipartisan and public way on our task force was taken into consideration.

And I think you need to be very careful about this process. There needs to be stricter procedures for minority rights. Consultation. Consultation. Yes, I may have misspoke on consultation, but I would certainly like to have written, in this rule and in this package, a much more precise process of how this technology is chosen.

The chair does not have to listen to any consultation or any advice—and you know that—based upon what is written there.

So I would expect much more precision, to see the biggest change to House procedures in my congressional career. And that spans not just the 7½ years that I have served here but also 16 other years working for another Member of this institution.

Mr. COLE. Mr. Chairman, I think I would reclaim my time, but I would grant you any time you might want to respond.

The CHAIRMAN. Well, I appreciate—I just—again, I mean, read the resolution.

And, again, you know, I appreciated the efforts that were made by both sides on the task force. But, again, I will point out, what my friends were asking for, at the end of the day, was to give the minority leader veto power over our ability to implement these temporary procedures. And the minority leader, when I asked him would he concur and allow us to move forward during this pandemic, said, no, he wouldn't. So he would have vetoed that.

So I appreciate that.

And, again, I don't question the gentleman's motives. And, again, I respect the gentleman from Oklahoma. And believe me, we will consult. And our staffs work very well together. We don't always agree, and the end result may not be what you want, but sometimes it will be. And that is the nature of this business.

But at the end of the day, we want to get this right. We understand the importance of this moment. But, again, I mean, the idea, to basically give the minority the ability to say, "We want veto power over anything, and we will use the veto power so you can't move forward," I think it kind of defeats the whole purpose of why we are having this conversation to begin with.

I mean, we have Members, Democrats and Republicans, who have approached us to say that, during this moment, we need to figure out alternative ways to be able to meet and to be able to do our business. And that is what we are doing here.

And if the deal is that my friends don't think that we should do this, that's fine. We just have a difference of opinion that we are not going to be able to bridge. But we will do our best to make sure that, as we move forward, and in the regulations that we—or guidelines that we put forward, that we are consulting with Mr. Cole and others and that we are being as transparent as humanly possible on this stuff.

So I thank the gentleman.

Mr. COLE. Reclaiming my time, just want to make two points.

Number one, I have no doubt that you will consult in good faith, Mr. Chairman. You have all the way through the process. And I look forward to you continuing to work with me.

To my friend Mr. Davis, you actually answered in your exchange with the chairman the question I was going to ask you, which was the concerns about, consultation or not, a single Member basically making a decision about remote voting. And in the amendment process, we may provide the opportunity for the majority to reconsider that.

And I would just urge you to—again, I think, in the end, you are the majority, and you have the ability to make the decision as a majority. You might want to consider expanding that out so it has

the legitimacy of the entire House—excuse me—or of the majority in the House.

I just think—and I know this is not the intent. And, again, I want to state for the record, I have enormous respect for the individual we are talking about. I don't have any doubt about her professionalism and her personal integrity. That is not it. I just think there ought to be more fingerprints on this particular decision. And I would ask my friends in the majority to consider that, going forward, in some form or fashion.

With that, Mr. Chairman—

The CHAIRMAN. Thank you.

Mr. COLE [continuing]. I yield back. Thank you for your generosity with the time.

The CHAIRMAN. Thank you very much.

Mrs. Torres.

Mrs. TORRES. Thank you, Mr. Chairman, for convening this meeting today.

And thank you to both of our panelists for being here.

Most of all, I want to take this opportunity to thank all of the staff that is here and that made this meeting possible. I know that you have stay-at-home orders, that you are not in compliance by being called here. So, in many ways, I consider you the heroes of the U.S. Capitol because you are here, working for the people.

I fully support this measure, and I want to thank both of you for helping Members of Congress convene meetings through whatever means possible that we have been able to do it, to ensure that we continue representing and hearing the voices in our communities, their concerns and their requests for assistance, as it has come down to having to do these, whether it is through the Teams network that I participated with you, Majority Leader Steny Hoyer—I really liked that platform.

But, as you know, platforms come and go, computer programs come and go. And I certainly don't want to be stuck, you know, with an old system, you know, that hasn't, you know, progressed with the times.

So this resolution is for—what is meant to address the issues of today. At the end of this Congress, we may not have a need to do this, and we may have another opportunity to do something. And hopefully we don't. Hopefully we will beat this virus, and we can go back to our more comfortable way of doing.

I do want to say that, just because I support having an opportunity to be able to have another Member vote for me, cast my vote on the floor for me, it doesn't mean that I am committed to doing that.

I have a preexisting condition. And when I got on the plane yesterday, I was scared to death. There were people in the screening area of the TSA process that were much too close for my own comfort.

And I had made a commitment to my staff, to my family, that if that plane was more than 70-percent occupied and there were people, you know, stepping over each other, that I would immediately get off of it before taking off, because I am not willing to risk my life for this. And I don't think that we should be asking

our staffs to risk their lives simply because we are afraid of a new system, of working under extreme conditions.

This is not normal. This is not something that—you know, one party or the other. This pandemic is not a Republican pandemic and is not a Democratic pandemic. It is a public health issue.

Eighty-plus-thousand people have died—80-plus-thousand—that we know of. There are many others that have died as a result of the complications of this disease that are not on record simply because we did not test them.

I don't want a test, when my 5-year-old grandson, who had been sick, could not even get a test; when a very popular pastor in my community died because he could not get a test—not because he lacked insurance, but simply because the tests have not been available in my community, like food isn't necessarily available in pantries in my community.

This gives people an opportunity to vote on behalf of their constituents on the floor, and not—simply because they are sick, they should not have to relinquish their vote and to be that voice of their community. This gives everyone an opportunity to do that.

So, with that, I want to yield back. And I want to thank you both for being here and risking yourselves on behalf of bringing better government and more accountability.

The CHAIRMAN. Thank you very much.

Mr. Woodall.

Mr. WOODALL. Thank you very much, Mr. Chairman, and thank you for convening us on this.

I didn't have the privilege of serving on the bipartisan group, and I appreciate the shared agreement on both sides of the aisle that folks put in a lot of very serious work there. Couldn't come to conclusion. To be fair, that work took place over a short period of time, and conclusions in a bipartisan way either are often small or they take longer.

And we have an opportunity to do some small bipartisan things. We are choosing to bring the whole package together at once.

I wanted to ask you, Mr. Leader, because I don't serve on the bipartisan committee—I do serve on the Rules Committee. I am thinking about rule XX, clause 5. This chamber spent 3 years between September 11, 2001, and January 4, 2005, talking about what to do in the event, not of unanticipated events, but, reading from rule XX, specifically, “the inability of the House to establish a quorum is attributable to catastrophic circumstances involving natural disaster, attack, contagion, or similar calamity.” We anticipated COVID.

And, again, 3 years of collaborative work went into that decision. What is the inadequacy of the work we did in a bipartisan way at that time?

Mr. HOYER. Well, ultimately, we didn't come to a conclusion. Had we come to a conclusion—and let me back up. The reason we didn't come to conclusion, the reality of the House shutting down did not occur. The 9/11 occurrence did not shut down our economy. It shut down the airplanes for about 3 or 4 days.

So that there was not the compulsion of the reality of being unable, in this case because of a pandemic, to come together. And, as

a result, the difficulty of getting to that point was not overcome, even though they took 3 years.

Mr. WOODALL. But we——

Mr. HOYER. Now, they did take some steps, as you know, but we did not get to a step that would solve the problem that we have now where Ms. Torres, so, I think, dramatically and correctly pointed out, she was fearful. She was fearful. And she is going to have to go home to her family, and she is hopeful that, while she is here, that wearing masks and keeping our distance will preclude her from being infected. Let us all pray that that is true of all of us.

But the reason they didn't get to an agreement was because the reality was not as stark as it is today. You know, nobody was wearing masks; nobody was not flying because they were afraid of sitting in the middle seat. You know, they didn't like sitting in a middle seat, but they weren't afraid that if they sat in a middle seat that they were going to get sick because of the proximity that that would cause.

And I think it is unfortunate that we didn't get to that, because if we had gotten to a solution and had provided for that, then we would not be having this discussion, because we would have set in place a way for the Congress to meet virtually.

And in addition to that, you and I both know, in the last 20 or 17 years, what extraordinary difference we have with respect to technology and the way to communicate with one another and the way to aggregate ourselves in a technological way rather than a physical way. So, had they had that technology, they may have tried to pursue it more energetically.

Mr. WOODALL. Well, I know of your passion for reaching a virtual opportunity. That is not where this resolution takes us today; that is out there on the horizon.

But they did reach conclusion in that effort after 2001, which is why it is in the House rules today, that the House's business must go on. And so, in the event that I can't get here because of contagion or Ms. Torres can't get here because of contagion, we are not going to let the absence of these two Members of Congress and the inability to establish a quorum prevent the House from doing business. We are going to have a quorum call; we are going to find out which Members can come back. And we took the unprecedented step of then reestablishing the number necessary for a quorum. And as Members began to travel or became unable to travel, that number for a quorum would adjust. We did establish——

Mr. HOYER. Which was a radical change, I would suggest to you, that Mr. McCarthy mentioned. That was a radical change, to say that less than a majority would be a majority. And, frankly, what it did not provide for, Mr. Woodall, is either your voice or my voice being heard if we were not physically present.

Mr. WOODALL. Well——

Mr. HOYER. So that our constituents would have been voiceless.

Mr. WOODALL. It does not provide for that.

Mr. HOYER. No.

Mr. WOODALL. I am not sure that answers my question about why, as opposed to rushing afford with changes, we are not utilizing the changes we spent 3 years on and have never used.

But let me go to that point about having our voice heard. I have read the documentation——

The CHAIRMAN. Mr. Woodall.

Mr. WOODALL. I am sorry, Mr. Chairman. Please.

The CHAIRMAN. Just let me make one point. I thought I made it before. I just want to again.

You know, the Constitution is clear: A majority of each house shall constitute a quorum in order to do business. Under the change that the Republicans put into place—I didn't vote for it at the time, because I thought there were serious constitutional questions—I mean, you could literally have two people constitute a quorum. I don't know how committees function. I am not even sure it would stand a constitutional challenge.

But, you know, the point we are trying to respond to is what Democrats and Republicans have expressed to me and, I am sure, to others as well, is that, you know, how do we function during a pandemic when, you know, we all want to participate, we all want to do our committee work, we want to move things forward? How do we do that? Can we do that remotely, and is there a way to do it?

But the rule change that the gentleman is referring to, I wouldn't call it a collaborative effort. There were hearings——

Mr. WOODALL. Uh-huh.

The CHAIRMAN [continuing]. But it was pretty controversial at the time. And, again, I am not sure how many people can defend, you know, having the House of Representatives potentially consist of two people calling all the shots. I mean, I don't think that—but I wanted to point that out.

And what we are doing here is, we want to follow the Constitution. We do believe a majority of the membership should be what a quorum is, not just a couple of people.

Mr. HOYER. Mr. Woodall, can I make a comment?

Mr. WOODALL. Just one moment, Mr. Leader.

To my chairman's point, I have no doubt that his concerns are sincere, but Speaker Pelosi has been elected Speaker of the People's House three times since these rules were put into place. If the majority had serious constitutional questions about the nature of House rules, I have no doubt, with the other rules changes the majority made, the majority would have repealed this section as well.

I don't dispute——

The CHAIRMAN. Well, with all——

Mr. WOODALL. I would be happy to yield to the chair.

The CHAIRMAN. To be honest with you, we didn't think—we probably should have thought about it. I mean, you know, the deal is, we never used it. But I think the gentleman has raised a good point, and we should take another look at it. Because I don't think that a quorum should be defined by potentially two people. I don't think that is consistent with the Constitution.

But the gentleman raised a good point, and when we get through this, you know, maybe we should be talking about—you know, we should talk about, you know, how we can take another look at that.

Mr. WOODALL. Okay.

The CHAIRMAN. But I thank the gentleman.

Mr. WOODALL. And in the spirit of the House creating its own rules, as the gentleman knows, we often have two people on the floor of the House, under a unanimous consent agreement. The Constitution is no less adamant that a quorum be present to conduct business, and yet two people on the floor of the House conduct business regularly.

So I recognize the gentleman's concern, and I think that is the minority's—

The CHAIRMAN. And if the gentleman wants to defend the House of Representatives operating in its entirety with potentially two people on the floor to deal with everything, then he can do that. I just don't think that is what the American people would like to see happen, and I don't think it is constitutional.

But the gentleman is right; we should take another look at it, because I do think we need to be planning for the future.

Mr. WOODALL. I appreciate the gentleman. I think he reflects my constituents' concerns. Two people on the House floor do not represent an active, deliberative body, though nor do 45 people on the House floor, as this—

The CHAIRMAN. Right, but the difference here is that—

Mr. WOODALL. Happy to yield to the chairman.

The CHAIRMAN [continuing]. We could all participate virtually. So the bottom line is, as Mr. Hoyer pointed out in the very beginning, you know, when we had our calls through various platforms, we all could see each other, we all could talk to each other, we all were able to participate, albeit virtually.

So we want everybody to participate. Those who can be here should be here. Those who can't can participate virtually. The Supreme Court is taking arguments right now virtually, and I don't know why we can't. So there is a big difference here.

Mr. WOODALL. Of course, the flip side of that is the United States Senate is meeting consistently right now, and I don't know why we can't. But—

Mr. HOYER. They have a virtual hearing—

Mr. WOODALL. In a hybrid—in a hybrid way, which, again, the minority leader said he would like to be a part of.

Mr. Leader, please?

Mr. HOYER. Excuse me. I tell people I have had this cough for 3 years. It is allergies, not anything else.

Mr. WOODALL. But you feel a little more suspicious now with it, don't you?

Mr. HOYER. That is right. That is right. Just keep them informed.

Why didn't they get to a resolution? If you ask Mr. Ornstein, who was very much involved in that, Norm Ornstein, whom I think you probably know, if you asked Mr. Baird, Congressman Baird from Washington State, he will say they failed, not that they didn't take some action. Why did they fail? Because the threat at that time was conceptual.

Let me suggest to you, one of the problems we have today is that, although people conceptually raised the pandemic that had happened in 1918, could happen again, it was conceptual, and, as a result, we were not prepared.

Here, it is actual. That is why you are sitting with a mask, why I am sitting with a mask, why we are distancing, we are in this large room, as the chairman pointed out, where a small room would have accommodated the Rules Committee and the witnesses. It is here. It is not conceptual; it is not theoretical.

We had 9/11. Now, if 9/11 had knocked out the entire air traffic system, it would have been actual, because people would not have been able to get here, except drive maybe 5 days or 3 days from the West Coast.

Mr. Woodall, it is actual. Ms. Torres's fears are shared by millions of Americans, in your community and in my community, about a pandemic that has killed hundreds of thousands of people, where the entire world has been impacted, where, for the first time in my lifetime—and I am older than anybody in this room—the economy of the United States was shut down purposefully, not because we had a recession or depression, but because we decided it was so important to stop this pandemic in its tracks, which we have not yet done, that we would shut down the economy of the United States. And 33 million people are unemployed. Depression-like levels.

So this is not conceptual; it is here. And we have to deal with it. And we have to deal with it, in my view, in a context where we do not take Congress off the field.

And this is an opportunity, in my view—and I use this. I talked to a newspaper reporter today. I do this with my grandchildren all the time, and it is much different than my talking to them on the phone. I see them. Very frankly, the children don't like to talk for very long, but, frankly, when they are on TV, they like it a lot more. They feel, "I can see He-Pop, He-Pop sees me," da-da, da-da, da-da. It is different. I don't know about the rest of you; I feel it is a different experience than talking on the phone.

Mr. WOODALL. I believe you are making Mr. Davis's point, though, Mr. Hoyer. It hasn't been 3 minutes here; we have conflated virtual voting with proxy voting. We have conflated hybrid hearings with not showing up on the House floor to vote—

Mr. HOYER. Mr. Woodall—

Mr. WOODALL [continuing]. To vote at all. There are a lot of issues going on here that we can absolutely deal with in a responsible and collaborative way, as the committee tried to do.

But that experience you are having with your grandchild, you didn't phone that in. You didn't designate to your nephew the ability to visit with your grandchild that day and have that count as having seen your grandfather.

Mr. HOYER. I am laughing, Mr. Woodall, because you and I probably agree more than the chairman and I agree. And the chairman agrees, too, in my view. And I don't want to speak for the chairman.

This is an interim step. But in a world in which we live, you can be in Tokyo and I can be in Washington, D.C., and you and I can call ourselves on FaceTime and see one another in real-time. It is a little different time on the clock where you are than it is where I am, but in real-time, as we are talking, we see one another.

And I think, you know, that is where I would go to ultimately, because I think that is the better way. But what the chairman—

and I agree; I am going to vote for this rule—has proposed is an interim way of getting there using something that we have used through history.

Now, I understand, in the House, we eliminated, but the Senate is still using it. So it is a technology—I think the chairman referred to as a simpler—maybe that wasn't the word you used, but—

The CHAIRMAN. Well, if the gentleman would just yield—

Mr. WOODALL. I would be happy to yield, Mr. Chairman.

The CHAIRMAN [continuing]. I am proposing that we take a baby step, that we go with a low-tech approach first. And, as we feel more comfortable, we can evolve.

Mr. HOYER. Low-tech.

The CHAIRMAN. This may shock you, Mr. Woodall, but there are some Members of the House who still have flip phones. There are some Members of this Chamber who are more technologically comfortable than others. There are some Members of this House who think bifocals are a radical idea.

So, I mean, the bottom line is, we are trying to deal with this situation in a way that we feel that there is a comfort level, and, as people get more comfortable, we can then look at other things. But the point of the matter is, we want to move in a way where everybody feels they can participate, not just those who maybe have more experience with technology than others.

And, again, that is the reason behind this, but, also, the bottom line is that, you know, we have experienced this reality, and we all need to be prepared because it may be coming back in the fall. And so, if it does, we can learn from what works really well, how we can do things better, but we need to be prepared. And that is what this is all about.

But I thank the gentleman for yielding.

Mr. WOODALL. You are very welcome, Mr. Chairman.

And since the leader has focused on this much more than I have—again, that bipartisan group that has been the source of a lot of praise—the resolution today is very specific when it comes to my designating my proxy. Mr. Davis and I agree on a lot; we disagree on a little. I hope he would trust me with his proxy if he couldn't be here on a particular day.

And it says specifically, "A Member casting a vote or recording the presence of another Member as a designated proxy under this resolution shall cast such vote or record such presence pursuant to the exact instruction received from the other Member."

Now, when Mr. Davis's name is called and I am holding his proxy and I speak out and vote in a way contrary to the Davis instruction—because things do come up on the fly, and not everything can be consulted with—what is the procedure for resolving that?

Mr. HOYER. The theory—not the theory, but I think the letter of the rule that is being proposed is: If you did not get instructions, you could not vote that proxy.

Mr. WOODALL. I am going the other direction. I did receive instructions, and I am voting against those instructions, just like in the electoral college where folks had received instructions to vote for President Trump but they don't. What is my recourse as a

Member? Again, the most solemn responsibility we have as Members is voting on the House floor. What is my recourse?

Mr. HOYER. "Madam Clerk, he cast my vote incorrectly." You can email. You can text. You can call. There are so many different methods of technology.

And Mr. McGovern and I have had conversations about this. My own view, I will tell you honestly, is that the best way for me to convey my vote is to look into my phone on FaceTime and say, I vote aye or nay.

I personally don't believe there is a security question. Everything we do is public. This meeting is public. The TV is watching me, what I do. I don't have any secret on that.

The CHAIRMAN. Mr. Woodall? If I could just—

Mr. WOODALL. I would be happy to yield to the chairman.

The CHAIRMAN. If it is an honest mistake—right? I mean, the deal is that you will—I mean, as I mentioned before, if you gave Mr. Hoyer your proxy and he cast it the wrong way and it was an honest mistake, you would hear "Mr. Woodall voted yes" or "Mr. Woodall voted no." There would be a period of time for you to correct it.

Now, if you are trying to assert that Mr. Hoyer would deliberately try to take your vote and use it in a bad way, then that is a question of privilege. And you would have the opportunity to be able to correct the record.

So there is the—I mean, hopefully, if you are participating remotely, you are following what is going on. You will hear your name announced. You will hear how you voted. And if you call and Mr. Hoyer doesn't want to change your vote, then it is a question of privilege and you have the right to be able to change it that way.

Mr. WOODALL. As the chairman knows and certainly as the leader knows, even in the short time I have been here, we have had motions to reconsider votes brought to the floor of the House, and they have to be brought in real-time.

We have had votes that have been held open for hours as leadership on both sides of the aisle went and twisted arms, one by one by one, to try to move a vote in a different direction. And I promise you, it is going to be easier to move a vote of one of my nine proxies that I am voting for than it is for you to move my vote on the House floor.

I recognize, in the public domain, we have more opportunities than ever before to correct errors, and I can be certain that, with Mr. Davis's vast digital presence, he will tell all of his constituents that I voted the wrong way for him. But the law of the land will have changed because I voted the proxy my way instead of his way. There is no mechanism for reconsideration, as I read the resolution.

We do have votes that hinge on a one-vote margin day-in and day-out. How do we anticipate correcting, not the understanding of someone's constituents, but the direction of public policy for the greatest country the world has ever known?

Mr. HOYER. Can I suggest that that is one of the reasons the rule provides for alternatives, and we ought to be talking about what those alternatives are that both of us believe give us a sense of confidence.

This is a first step. I think it is a credible step. It is something that has been used and is used.

The contingency that you raise is certainly possible. I think we all have to recognize that. And it is certainly possible that any contingency might have technological glitches as we move forward, and we will have to consider making accommodations for that that we otherwise might not have thought of.

So I think you raise a legitimate point, not against the rule, but a legitimate point of something that we ought to look at as we implement the rule.

The CHAIRMAN. Mr. Woodall.

Mr. WOODALL. The gentleman shares my concern that this may change the direction of public policy but will still support the rule, and we will sort these problems out on the fly? Is—

Mr. HOYER. Mr. Woodall, let me call your attention back to a time when the Republicans, who were managing, forgot to ask for a recorded vote on an issue. Do you recall that I stepped forward and said we are going to reconsider it so that we would be fair? Well, I would do the same in this instance. Because the chairman's rule perceives that your intention is carried out. There is no discretion.

If somebody votes differently than you instructed them to do, that is a violation of the rule, it is a question of privileges of the House, and it has to be corrected.

Mr. WOODALL. I won't belabor this any longer, Mr. Chairman. I will tell you that you worked very hard to build a lot of goodwill in this committee, for which I am not just grateful but I am the beneficiary. It is the consensus opinion that this is an unprecedented change.

The CHAIRMAN. Uh-huh.

Mr. WOODALL. It is the consensus opinion that it got started in a bipartisan way but we are now talking about things that were never even discussed in the bipartisan committee that might come forward. And we have defined "consultation" as being, "Guidance is going to come out tomorrow, and the ranking member still hasn't seen any of it yet."

And so I hope the chairman understands, for institutionalists—and I want to stipulate what the leader said to begin with, that he has a reputation of being both an institutionalist and a fair-minded, bipartisan negotiator—we don't get to put this genie back in the bottle. Harry Reid was wrong to do what he did in the Senate. I think Mitch McConnell was wrong to do what he did in the Senate. We are never going to get any of those things back.

And what we are doing today is not something that is going to last for the life of this pandemic; it is something that is going to last for the life of this institution. And I hope the chairman takes the concerns on our side of the aisle not remotely as a "I don't trust the leader or the Speaker or the chairman," but as a "I have the trust of generations of the American people that I have to be accountable for, and moving this dramatically, this quickly, gives us great pause."

You had a wonderful, bipartisan committee, and I refuse to accept that there was not a pathway forward, even if more incremental than the majority would have liked to see, that there was

not a pathway forward that could have been done with the complete support, as opposed to this division.

Mr. Leader?

Mr. HOYER. I thank the gentleman for his comment.

Unlike the reference—I made a reference to the Supreme Court and the U.S. district courts and circuit court appointments. I agree with the gentleman's conclusion that that was a mistake.

What I disagree with is, though, that this rule does not change, as that rule changed on both sides—Republicans, Democrats—does not change the rights of the minority, does not change the outcome.

I don't mean that somebody couldn't make a mistake or, let's say, intentionally, which would have been subject to, frankly, being removed from the House, in my opinion, if somebody intentionally voted somebody's vote differently.

But this rule does not change the rights of the minority. It does not change the consequences of votes. It doesn't change—as those Supreme Court decisions did. And it is intended simply to empower the Congress to be able to meet and meet its responsibilities to the American people.

Right now, a committee, if its members either can't get on transportation or are sick themselves, whatever it is, but are fully able to—you know, their faculties, their mental faculties are whole to instruct somebody to vote—let me say something that maybe I shouldn't say.

You are sitting on an aisle. There are four people sitting on the aisle. And there are a lot of people coming around. And Rodney is there, and I said, Rodney, will you put this in the slot? He does, and I tell him how to vote. He does that.

Technically, that is a violation. But it is not a violation. I am there, I am voting. It just so happens I am using his hand rather than my hand. But he is doing what I told him to do.

What the American people want is the ability of the Congress at a time like this—and you cannot name another time like this in your lifetime. I can't, and I am a lot older than you. There is no analogy, except perhaps the Spanish Flu, where they did have two people on the floor and they passed legislation, but not much. They didn't do much during the Spanish Flu. That was a century ago. So this is a century happening, if you will. And it is in that context that we are acting quickly.

Why are we acting quickly? Because the experts tell us—and some people believe the experts—that this may regenerate itself in September. We may have a flattening, but until, frankly, we get a vaccine or a therapeutic that very substantially minimizes the consequences of COVID-19, we are going to have a problem. And if it raises again its ugly head in September, we ought to be ready. Because September is going to be a very busy month for us, and we don't have a lot—it is an election year, so we are going to be off in October, et cetera, et cetera. So now is the time.

You say we moved quickly. We did move quickly, because we need to anticipate—we all hope this gets better. We all hope we get a vaccine. We all hope we get a therapeutic. But if it doesn't, we need to be ready to make sure that Congress is empowered to act on behalf of the American people and to conduct oversight that the

extraordinary funds that we are appropriating are used in a way as we intended.

Mr. WOODALL. I stipulate that this is a crisis of a magnitude that I have never seen before.

Mr. HOYER. Right.

Mr. WOODALL. But I was here with you on September 11. And we never imagined that we would go another 18 years and not have another attack on this Capitol. We expected it to come again the next day.

In the month of October, 30 days later, when anthrax came to Capitol Hill and folks became afraid to open up their mail that they were getting from their constituents, we expected there to be deaths on Capitol Hill because the Capitol was targeted.

And the D.C. sniper. I remember the talks of families, that, was it worth running for Congress again, because Washington was becoming a life-and-death decision.

I don't want to see us justify with a crisis something that we would not otherwise do as the caretakers of this institution.

I appreciate your commitment not to undermine minority rights. This resolution is silent on notice requirements for virtual hearings. I am sure that will be included in the guidance, but it is silent as we sit here today. It is silent on whether or not I can still have a Member's words taken down. Will I be able to protect decorum? Can I make a motion to adjourn? It is silent on those issues as we sit here today.

Mr. HOYER. And——

Mr. WOODALL. And I am concerned about what the guidance is going to look like, but I am comforted by your commitment that you know it would be wrong to undermine minority rights and you have no intention of pursuing that path.

Mr. HOYER. Let me, if I can. They are silent on those rights, which are currently in the rules and are not changed. It is not the intention of this rule to change any protection the minority has that currently exists. There is no need to tell it in the rules because we don't change those rules. We want you to have notice requirement, amendments requirement, cross-examination requirements, time that you are entitled to use during committee hearings.

This is not about party. This is not about faction. This is not about philosophy. This is about ensuring that the Congress of the United States can act even if it can't get its Members into a particular room, including the House Chamber.

Mr. WOODALL. My friends won't believe me, Mr. Chairman. I am trying desperately to close, but the leader keeps bringing up new topics as I conclude.

There are prefiling requirements in here. There is no opportunity for me to offer secondary amendments——

Mr. HOYER. No, they——

Mr. WOODALL [continuing]. In the virtual committee process.

Mr. HOYER. No, I wanted prefiling for amendments, and Mr. McGovern did not want to have that in there, and, as far as I know, it is not in there. They are talking about it, but as I read and as I had a discussion with Mr. McGovern, I thought there ought to be prefiling.

Let me tell you why I thought there ought to be prefilings. Because if you weren't in one room together, it would be hard to hand it out. So if you got it out before, Members would have—but you would still have secondary amendments. And I think that is pretty easy to solve. Every committee, almost, has a screen, and you put up on the screen, and everybody sees it on their computer at home, this is the amendment, and they read it.

But I have thought prefilings was a protection for every Member, that they would know what the amendments are. After all, this is—you know, I am a trial lawyer, and you like to, sort of, spring something, surprise, you know. It is our Perry Mason thing, and everybody says, "Oh, wow. Isn't that something?" But, frankly, we have a discovery process in the law. The reason for discovery is because it ought not to be about surprises; it ought to be about substance.

And that is why—but the chairman said, "I don't think the Republicans will feel that is fair, so we won't do it."

Now, my understanding, Mr. Chairman, that we didn't put it in.

The CHAIRMAN. We did not.

Mr. WOODALL. I appreciate the—

Mr. HOYER. So I agreed with Mr. McGovern—well, I didn't agree with him, but I said, "If that is what you think, and I want to be fair to the Republicans, and you think the Republicans will not think that is fair, fine, leave it out."

Mr. WOODALL. I appreciate the gentleman's commitment.

I was on the floor yelling and screaming for a recorded vote on a measure just a short time ago, and the Parliamentarian just didn't see me. I wasn't at the microphone; I was on the back aisle. I was overlooked, and I was denied my rights as a Member of this institution because the Parliamentarian could not see me to direct the chair.

It troubles me that, as we move towards adopting a brand-new process of conducting our business, that there would not be cognizance that not only could a Member's rights be denied currently in an in-person proceeding but they would be certainly susceptible in a brand-new proceeding. And if we are not proceeding forward with the understanding that those rights could easily be denied, then I have no doubt they will be trampled upon along that path.

So I appreciate the chairman's indulgence in letting me make it clear that I have those concerns. And hopefully my colleagues will share those concerns, as the leader does.

I yield back, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. PERLMUTTER.

Mr. PERLMUTTER. Thanks, Mr. Chair.

This is all about the continuity of government, period, bar none. That is it.

Joseph Story, a couple hundred years ago, said, "Congress, in representing the entire Nation, must be able to exercise certain inherent powers to deal with unforeseen circumstances which could threaten the continuity of its operations and the safety of the Nation."

Another famous scholar, a guy named David Dreier, said, "One of the most important duties of the Congress is to assure con-

tinuing representation and congressional operations for the American people during times of crisis.”

Mr. Hoyer, I think you have explained it perfectly. And Mr. Cole has heard me reject the nostalgia that he projects and the need to be able to meet in close groups and visit, which is—as I said, we had a virtual hearing a month ago on this—and I said to the gentleman from Oklahoma at that time, that is what I love about the Congress, is the ability to, with Mr. Davis, you know, play some catch and discuss a particular issue or sit down over a beer and try to hash out a particular problem. That is what is great about this place.

But, on the other hand, we are in a very different time that doesn’t allow for that kind of relationship. The relationship is by phone, or it is by FaceTime or Zoom or WebEx or whatever. That is what it is. I mean, I would love to come over and sit next to Mr. Cole and, you know, visit about this rule and say, “Okay, where could we make some changes that would satisfy you all?”

Mr. PERLMUTTER. But we cannot have government come to a grinding halt in a pandemic, where our own Attending Physician or our public health experts at home or the public health experts here in D.C. say, “You guys shouldn’t get together, because you could drag the disease from Denver to D.C., or you could take the disease from D.C. back to Denver.” And that is the last thing I want to do. I am not worried about my own health. And Mr. Jordan and I had this conversation the last time we met in this room. And it is about being the vector that could affect so many others, and to demand of our staff when there are better ways to do this.

So, Mr. Hoyer, let me ask you a couple questions.

The rule, as I understand it, for a quorum says “chosen, sworn, and living,” but does not require presence. Am I wrong on that?

Mr. HOYER. I am sorry. Repeat again?

Mr. PERLMUTTER. Quorum, those who are chosen—

Mr. HOYER. Oh, quorum. A quorum can be a virtual quorum.

Mr. PERLMUTTER [continuing]. sworn, and living.

Mr. HOYER. Yes.

Mr. PERLMUTTER. That is what it requires, not presence.

The Constitution says we should assemble in D.C. at least once a year. And I would assume we have met that requirement, several times.

Mr. HOYER. We did, but I would like to comment on that.

Mr. PERLMUTTER. Sure.

Mr. HOYER. The Founders could have no conception that you could assemble virtually in that box that I talked about, that computer or that iPad or whatever—

Mr. PERLMUTTER. But I guess I am just saying, even if they did, we have actually physically assembled this year—

Mr. HOYER. We have.

Mr. PERLMUTTER [continuing]. at least once in Washington, D.C.

Mr. HOYER. Yes.

Mr. PERLMUTTER. And I have said to you and I have said to Mr. McGovern, I don’t think this rule goes far enough. And my friends Mr. Cole, Mr. Davis, and Mr. Woodall apparently think it goes too far.

I guess the real problem here is that, when the rule was amended, as Mr. Woodall talked about, you know, 15, 16 years ago, 2005, 2006, it discussed contagion, but it didn't really go into contagion; it went into incapacity.

People, if they have to stay someplace else, at home because they have shelter-in-place orders, or who come here and we have to be 6 feet apart—and most of the committees are going to be in different rooms because they can't be handled. They are not next to each other; they are not in the same place. They are going to have to work virtually anyway.

So it is my opinion that—and this is where you were going, Mr. Hoyer, I think—that back in 2005, 2006—the change to the rules didn't go far enough, because with contagion you have a different set of circumstances that we face today. And it isn't like there was an attack and it was over and you now figure out what to do next. This contagion exists today and will continue to exist for the foreseeable future. We were told that Washington is a hotspot. In Denver, we can see the surge having reduced, but not here.

So I said a month ago to my friends that it would be legislative malpractice if we didn't address this subject. And a month later, it still would be legislative malpractice.

Now, Mr. Hoyer, I understand that this rule terminates. This is a temporary rule, is it not?

Mr. HOYER. For the life of the Congress and 45 days, in the sense that it has to be recertified that the cause of the rules being implemented was still present.

Mr. PERLMUTTER. Right. For the rule to be called upon, it has to be the Sergeant at Arms, the Attending Physician, and the Speaker. And then it lasts for 45 days, or at least the proxy voting and the different things called for in the rule.

The rule itself is temporary, the change, because it ends at the end of this Congress—well, 45 days, potentially, after, I guess. But I think it ends with the end of this Congress, and that is why it is temporary.

So I would say to my friend Mr. Davis and to Mr. Cole and Mr. Woodall that if you all were to take the majority next year, then you could revise this rule as you so choose. I don't think you are going to take the majority next year, but you certainly could.

If I didn't know the three of you better, you know, I would say the effort here to not address this issue in any meaningful way is to bring the Congress to a halt. And I know that isn't your intention, but that is, in fact, what happens if we don't deal with this thing, given this contagion, this miserable disease that has killed tens of thousands of people.

We have to address this. We should have addressed this 2 months ago, and we had better take care of it now.

With that, I yield back to the chair.

The CHAIRMAN. Thank you.

Before I yield to Mrs. Lesko, let me just yield to Mr. Cole for a unanimous consent request.

Mr. COLE. Thank you very much, Mr. Chairman.

I ask for unanimous consent to submit the following for the record: a letter from the ranking member of the Committee on Homeland Security, Mike Rogers, to the ad hoc working group de-

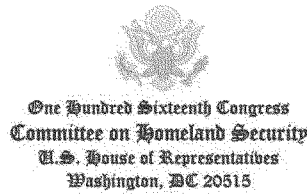
tailoring a number of rule violations with regards to the recent Committee on Homeland Security hearing; a letter from the ranking member of the Committee on Natural Resources, Mr. Bishop of Utah, to the chairman of the Committee on Natural Resources, Mr. Grijalva, detailing the committee's use of unofficial and highly partisan roundtable discussions displayed as hearings on the committee official website; a letter from the Republican leader, Mr. McCarthy, to the Speaker, Ms. Pelosi, detailing a Republican plan to establish a clear, safe, and effective path to reopen Congress; and, finally, Mr. Chairman, a letter from all committee ranking members to the majority leader, Mr. Hoyer, detailing a number of issues with respect to partisan changes proposed by H. Res. 965.

The CHAIRMAN. Without objection.

[The information follows:]

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

MIKE ROGERS, ALABAMA
RANKING MEMBER



April 30, 2020

Dear Members of the Ad Hoc Working Group,

I want to start by thanking you for your diligent work in determining how to safely return the House to a normal operating condition.

It is my belief that the House should return to legislative session next week, just like the Senate. The important oversight and legislative work of the House is best carried out when Members are in town and can exchange ideas and have debate in person.

Just last week, the House voted on two measures and the Committee on Small Business met for their "Member Hearing Day." Additionally, the Committee on Appropriations will hold a subcommittee hearing next week. These are all positive signs that the House can safely meet in person and do the work of the American people during this pandemic.

I have many concerns about changing the House rules to permit virtual committee hearings, markups, and other meetings. First and foremost, I worry about the rights of the minority Members being trampled on by the majority. We have no guarantee that minority Members will be involved or invited to committee events as are required under House and committee rules. Unfortunately, that scenario has already played out.

On Wednesday, April 29, 2020, Chairman Bennie Thompson of the Committee on Homeland Security announced three committee events which the Committee's website indicates are hearings:

- A "Virtual Roundtable" entitled "TSA Employee Protections and Benefits in Response to COVID-19" to be held Thursday, April 30, 2020;
- An event entitled "A Conversation with Former FEMA Administrator Craig Fugate" to be held Friday, May 1, 2020; and
- An event entitled "A Conversation with Former White House Ebola Response Coordinator Ron Klain" to be held Friday, May 1, 2020.

None of these events were publicly noticed in violation of the Rules of the House and the Committee (House Rule XI 2(g)(3) and Committee Rule V A(1)(a), respectively). The minority was informed of these events the day before via a press release.

None of these events are open to the public in violation of the Rules of the House and the Committee (House Rule XI 2(g)(2)(A) and Committee Rule VI (A)(1), respectively). The only

accommodation to the public is a statement on the Committee's website that the public can "Check back for a live video of this hearing".

None of these events afford Minority members the opportunity question witnesses or make a statement of any kind in violation of the Rules of the House and Committee (House Rule XI 2(j)(2)(A) and Committee Rule VII (A)(1), respectively).

The minority is not being afforded a witness or participant of its choosing at these events, nor is testimony being made publicly available in advance in violation of the Rules of House and Committee (House Rule XI 2(j)(1), Committee Rule VIII (B), House Rule XI 2(g)(5)(A), and Committee Rule VII (D), respectively).

Most shocking however, is the announcement by Chairman Thompson that only Representatives Correa, Titus, Demings, Payne and Rose will be participating in these virtual committee events. No Member of the minority was invited, nor does it appear that Members of the majority other than those listed were made aware of these events. Moving forward in virtual settings, allowing committee chairman to select which Members of their committee are allowed to participate in committee events is an unprecedented action that flies in the face of over 200 years of House practice.

As you move forward with your important work, I strongly encourage you to reject the actions of Chairman Thompson and the dangerous precedent they set. All Members should have the ability to fully participate in all committee events and the rules of the House and of each respective committee should be fully respected and enforced.

As I said before, the best way to do that is for Members to return to Washington, D.C. We have already demonstrated that the House can carrying out its Constitutional duty in our Nation's capital, while also adhering to health guidelines. Similar to the Senate, we can work with our support agencies and healthcare professionals to conduct in-person committee business while also adhering to social distancing guidelines.

Respectfully,

A handwritten signature in black ink, appearing to read "Mike Rogers", with a stylized flourish at the end.

Mike Rogers
Ranking Member
Committee on Homeland Security

RAÚL M. GRIJALVA OF ARIZONA
CHAIRMAN
DAVID WATKINS
STAFF DIRECTOR

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

ROB BISHOP OF UTAH
RANKING REPUBLICAN
PARISH BRADEN
REPUBLICAN STAFF DIRECTOR

April 30, 2020

The Honorable Raúl Grijalva
Chairman
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman:

These unprecedented times have brought Congress together in a truly bipartisan manner. Notably, in the past month we successfully rose above partisanship and passed multiple rounds of historic legislation to mitigate the health and economic impacts of the pandemic. As Americans have gone to great lengths to adapt to the current situation, so too must Congress. In that spirit, House Democrat Leadership recently pulled back on a partisan proposal related to remote committee proceedings that would have denied minority rights under House Rules.

As you know, House Leadership is instead moving forward with a taskforce to review proposals related to vote by proxy and remote proceedings on a bipartisan basis. In the meantime, committees are not authorized to hold official hearings and markups remotely. This poses challenges as there is important work and ongoing oversight to be conducted. On a positive note, many committees have developed creative avenues to continue serving our constituents through virtual public forums or meetings with bipartisan participation. Disappointedly, however, our Committee is one of few unsuccessful in rising above the partisan fray to carry on our work in a manner that offers all Members a voice in the process.

Under normal circumstances prior to the pandemic, you and your staff often used “roundtables” and “forums” as a supplement to official Committee proceedings. To my knowledge, these were exclusively partisan affairs that mostly catered to special interest groups. Even though these events were paid for with official Committee funds they often covered a range of topics not within our jurisdiction. At the time, Republican Members withheld complaints as most Committee stakeholders largely ignored the gatherings. Instead, we relied on official hearings and meetings to influence debate and policy. With an absence of regularly scheduled official Committee meetings, however, these partisan roundtables have become the exclusive public function of the Committee. This is deeply concerning.

While roundtables are generally an acceptable practice, the ones you recently scheduled, as displayed on the “hearings” page of your official website, indicate an attempt to substitute official Committee business. You are seemingly mimicking hearings to include inviting executive branch witnesses while not inviting Republican participation. Most glaringly, Committee Democrats are seeking government witness participation to address draft partisan legislation. In another instance, a witness or “speaker” for your roundtable includes a Democrat party official.

The Honorable Raúl Grijalva
April 30, 2020
Page 2

Instead of adopting a more collaborative process during this time, you appear to use the circumstances of a crisis to circumvent transparency and avoid opposing viewpoints. This is an institutional disservice to the House and degrades the Committee. I urge you to take a step back and identify a better approach. With any hope, the House bipartisan working group tasked with reviewing these and other challenges (copied here) can soon provide productive input.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Bishop", with a long horizontal flourish extending to the right.

Rob Bishop
Ranking Republican

cc: Members of the Ad Hoc Working Group
Majority Leader Steny Hoyer
Minority Leader Kevin McCarthy
The Honorable Zoe Lofgren
The Honorable Tom Cole
The Honorable Rodney Davis
The Honorable Jim McGovern

KEVIN MCCARTHY
23RD DISTRICT, CALIFORNIA
REPUBLICAN LEADER



H-224, U.S. CAPITOL
WASHINGTON, DC 20515
(202) 225-4000
www.republicanleader.gov

Congress of the United States
House of Representatives
Washington, DC 20515-6538

April 21, 2020

The Honorable Nancy Pelosi
Speaker of the House
H-232, U.S. Capitol
Washington, D.C. 20515

Dear Speaker Pelosi,

With the House now in its fourth week of regular session being suspended, I am writing to request that we work to establish a clear, safe, and effective plan for reopening Congress.

In my view, conducting the business of the People's House is the definition of "essential work"—just as many of our friends and neighbors continue working to hold up our communities on a daily basis.

Unfortunately, members have yet to be given specific guidance as to how Congress will fulfill its core duties—from deliberation to oversight to legislation—over the coming days and weeks.

Since the onset of this pandemic, Congress has worked expeditiously to undertake the largest relief effort in our country's history. Nevertheless, I think we can agree that our institution's current posture cannot and should not become the norm.

Below are several issues that should be addressed in any such plan—and on which myself and our members stand ready to work with you towards a constructive, bipartisan solution:

Committee and Subcommittee Business

- How will committees and subcommittees draft and mark-up high priority legislative items, such as the National Defense Authorization Act and FY21 Appropriation measures, as well as conduct key oversight, for example into the World Health Organization's initial response to this pandemic?
- What schedule can be instituted to resume committee and subcommittee activity that comports with CDC Guidelines and recommendations from the Office of the Attending Physician? For example, staggered meeting days and rotating use of larger committee hearing rooms to maintain adequate social distancing.

House Calendar

- In a recent Dear Colleague, Leader Hoyer stated that “the House may meet during weeks that had previously been scheduled as District Work Periods, and four-day weeks may become five-day weeks.” Given that multiple session weeks have already been lost and the Majority Leader has announced an additional two weeks of recess, I would urge a revised 2020 calendar be sent to all members for their planning purposes.

Floor Proceedings

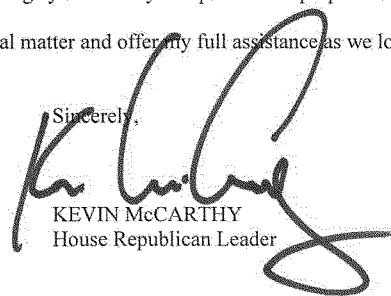
- How many hours of advanced notice will be given to guarantee members have sufficient time to be present for any recorded votes in the House?
- It has been reported that Chairman McGovern is recommending a House rules change to allow for “voting by proxy” during this period. What are the details of this proposal, how will it avoid potential abuses of power, and when do you expect this proposal to be made public for the necessary scrutiny and member input that changing 200 years of House precedent would merit?
- What consideration, if any, has been given to utilizing the provisional quorum authorities outlined in House Rule XX, Clause 5(c), which specifically contemplates use in a pandemic?

I fully appreciate the unprecedented nature of this challenge before us. But now, more than ever, our constituents expect us to rise to the occasion and overcome these trying circumstances.

It is imperative we outline a pathway forward that ensures transparency and regular order for all members—not centralized decision-making by a select group of leadership and staff that reduces the role of representative to merely voting “yea” or “nay” on pre-drafted proposals.

I appreciate your attention to this critical matter and offer my full assistance as we look to get back to work in the People’s House.

Sincerely,



KEVIN McCARTHY
House Republican Leader

Congress of the United States
Washington, DC 20515

May 14, 2020

The Honorable Steny H. Hoyer
 Majority Leader of the House
 H-107, U.S. Capitol
 Washington, DC 20510

Dear Majority Leader Hoyer:

We write in regards to H.Res. 965, which proposes partisan changes that facilitate remote and virtual committee operations while the House remains in recess.

When the Majority first released proposed rule changes a few weeks ago, we couldn't possibly imagine it could get any worse for the House as an institution. Yet, somehow, the Majority managed to write an even more egregious package of rules changes and seems hellbent on pushing these changes through without bipartisan consensus.

Upending more than 200 years of precedent through partisan fiat will jeopardize the deliberative process of the House of Representatives and our ability to represent our constituents. The House will be in session this week with debate being held and votes being cast. If the whole House can conduct business while adhering to health guidelines, then so too can our Committees.

The work of committees should be prioritized to ensure that we are producing thoughtful legislation to support the continuing response to COVID-19 and to foster a robust economic recovery for the American people. Properly prioritizing this work will ensure greater flexibility in scheduling and increase our ability to follow all applicable health guidelines.

Congress has already demonstrated that we can come together during this crisis to address the needs of the American people. Unfortunately, many of the proposed changes in H.Res. 965 are only necessary if you seek to move partisan measures or legislation un-related to the COVID-19 response.

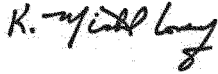
The proposed resolution gives unilateral authority to Chairman McGovern to determine how committees manage their business. Currently, committees are required to vote to ratify proposed committee rules, but this new superpower will allow a single Member of the House to determine the rules of the road for all without amendments and without a vote.

The issuance of a subpoena and conducting a deposition are serious matters. To allow remote depositions underscores how unserious H.Res. 965 truly is. A deposition is an important tool for committees to use and it should not be subject to the uncontrolled environment of an untested virtual setting.

The rights of the Minority in the House must be protected. Without the ability to ensure the rights of our Members are secured, we cannot support your efforts and will oppose any attempt to alter the rules.

As Ranking Members of all standing and select committees, we oppose this partisan assault on the rights of the House Minority and our ability to effectively represent the American people.

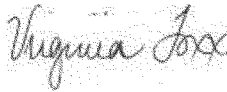
Sincerely,



MICHAEL CONAWAY
Ranking Member
House Committee on Agriculture



MAC THORNBERRY
Ranking Member
House Committee on Armed Services



VIRGINIA FOXX
Ranking Member
House Committee on Education and Labor



KENNY MARCHANT
Ranking Member
House Committee on Ethics



MICHAEL McCaul
Ranking Member
House Committee on Foreign Affairs



RODNEY DAVIS
Ranking Member
Committee on House Administration



KAY GRANGER
Ranking Member
House Committee on Appropriations



STEVE WOMACK
Ranking Member
House Committee on the Budget



GREG WALDEN
Ranking Member
House Committee on Energy and Commerce




PATRICK McHENRY
Ranking Member
House Committee on Financial Services



MIKE ROGERS
Ranking Member
House Committee on Homeland Security



JIM JORDAN
Ranking Member
House Committee on Judiciary
House Committee on Oversight and Reform



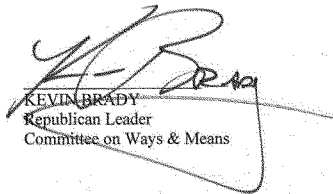
ROB BISHOP
Ranking Member
House Committee on Natural Resources



FRANK LUCAS
Ranking Member
House Committee on Science, Space and Technology



SAM GRAVES
Ranking Member
House Committee on Transportation and Infrastructure



KEVIN BRADY
Republican Leader
Committee on Ways & Means



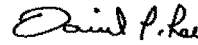
GARRET GRAVES
Ranking Member
Select Committee on the Climate Crisis



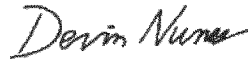
TOM COLE
Ranking Member
House Committee on Rules



STEVE CHABOT
Ranking Member
House Committee on Small Business



PHIL ROE
Ranking Member
House Committee on Veterans' Affairs



DEVIN NUNES
Ranking Member
Permanent Select Committee on
Intelligence



TOM GRAVES
Ranking Member
Select Committee on the Modernization
of Congress

Mr. COLE. Thank you very much, Mr. Chairman.

The CHAIRMAN. And I would ask unanimous consent to insert in the record next to those all the responses to those letters.

Without objection.

[The information follows:]

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

MIKE ROGERS, ALABAMA
RANKING MEMBER



One Hundred Sixteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

April 30, 2020

Dear Members of the Ad Hoc Working Group,

I am in receipt of a copy of a letter dated April 30, 2020, from Ranking Member Mike Rogers to you. Like Ranking Member Rogers, I want to thank you for your diligent work.

The Committee on Homeland Security has not held any hearings since March 11, 2020. At that hearing, entitled "Confronting the Coronavirus: The Federal Response," Members received testimony from representatives from the Departments of Homeland Security and Health and Human Services.

Since March 11th, Committee Members have led a number of fora that were broadcast to the public on topics related to COVID-19. These informal online events were not characterized as hearings. Further, the manner in which they were conducted made it clear that they were not hearings. For instance, there was no written testimony collected, no five-minute questioning, and no official reporter creating a transcript.

We are living in unprecedented times, not only for the U.S. House of Representatives, but also for the world. We were elected to pursue oversight in the interest of the public. I remain committed to pursuing this oversight. In the past six weeks, the Committee has held multiple Member briefings with Department of Homeland Security officials. We have also sent roughly 40 letters that seek information related to COVID-19 preparedness and response that are pending with the Administration. I look forward to the day when the Committee can reconvene under House Rules, and Administration officials come before the panel to testify on COVID-19 and other critical homeland security matters.

Thank you for your attention to this matter. I am looking forward to your recommendations.

Sincerely,

Bennie G. Thompson
Chairman

Cc: Speaker Nancy Pelosi
Ranking Member Mike Rogers

RAÚL M. GRIJALVA OF ARIZONA
CHAIRMAN

DAVID WATKINS
STAFF DIRECTOR

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

ROB BISHOP OF UTAH
RANKING REPUBLICAN

PARISH BRADEN
REPUBLICAN STAFF DIRECTOR

May 1, 2020

The Honorable Rob Bishop
Ranking Member
House Natural Resources Committee
1329 Longworth House Office Building
Washington, DC, 20515

Dear Mr. Bishop:

Your letter of April 30 describes the proactive steps taken by the Committee Majority to serve the American people and craft solutions related to the ongoing pandemic. We have conducted three online public roundtable discussions with expert witnesses about the impacts of coronavirus in tribal communities, under-resourced communities and communities of color, and the U.S. Insular Areas. This ongoing public health crisis demands leadership and innovation, which Democrats in Congress continue to provide the American public.

We are planning several more Democratic roundtables, including discussions of anti-environmental actions taken by the Trump administration during this crisis and the need for legislation to reduce the risk of future viral infections being transmitted from wildlife to people. We are also planning two bipartisan roundtables, one documenting the impacts of the pandemic on the fishing industry and a follow-up discussion of coronavirus impacts in Indian Country. We are hopeful that Committee Republicans, as well as representatives from the Trump administration, will participate.

To the extent Committee Republicans have concerns about the harm coronavirus is having on the American people, I urge you to arrange roundtable discussions of your own, which are authorized under current House and Committee rules.

We solicited potential discussion topics from the minority. Your staff responded in writing to suggest two topics for events, which I am reproducing verbatim below:

1) **Supply Chain Vulnerability and Minerals**

<https://www.nationaljournal.com/s/706005/coronavirus-crisis-spurs-calls-for-more-us-mining?&unlock=LPIZN2LXZLE9E25A>

- “The coronavirus outbreak is laying bare a strained U.S. supply chain for pharmaceuticals and medical devices... “Supporters of the critical-minerals legislation are going to highlight any sort of issue in the supply chain that they can use to advance their position,” a Senate Democratic staffer, who also requested anonymity because of the fluid talks on rescue packages, said. “Obviously this [coronavirus outbreak] does show some real gaps.”
- “The U.S. imports 100 percent of more than 30 minerals, including a family called rare-earth elements, according to the U.S. Geological Survey. Many of the minerals are necessary inputs for the clean-energy products, such as wind turbines and electric vehicles. But the minerals are also used in a host of medical devices.”

2) **NEPA**

<https://bipartisanpolicy.org/wp-content/uploads/2020/03/BPC-Comment-Letter-on-CEQs-NPRM.pdf>

“Absent meaningful improvements to the NEPA and permitting process, it is hard to imagine the United States dramatically revamping its energy and transportation in time to avoid the worst effects of climate change or strengthening our resilience against the climate-driven risks that are already unavoidable.”

The years-long, highly partisan debates about industry’s desires to expand mining on public lands and limit application of the National Environmental Policy Act predate the COVID-19 pandemic and have nothing to do with the current crisis. To the extent you wish to explore them, I encourage you to convene Republican roundtables on these topics immediately. In the meantime, I hope you too will “take a step back and identify a better approach” to identifying bipartisan solutions to the current crisis.

There is nothing inappropriate or even unusual about the events we have held and will continue holding. Roundtable discussions, virtual or not, provide a critical platform for highlighting important issues. As always, some of these will be bipartisan and some will not. Should the House adopt rules governing the conduct of official business remotely, the Committee will of course be bound by such rules.

Sincerely,



Raúl M. Grijalva
Chair
House Committee on Natural Resources

BENNIE G. THOMPSON, MISSISSIPPI
CHAIRMAN

MIKE ROGERS, ALABAMA
RANKING MEMBER



One Hundred Sixteenth Congress
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

May 5, 2020

Dear Ranking Member Rogers,

Thank you for your May 4th letter regarding Committee on Homeland Security virtual events. I hope you and your loved ones continue to be well.

Over the past two months, the Committee has continued its robust oversight of the Department of Homeland Security's handling of the COVID-19 pandemic. To date, we have held half a dozen bipartisan Member calls with Administration officials on critical aspects of COVID-19 response and four virtual events with small groups of Members and outside experts. Neither the Member calls nor the events are Committee hearings or substitutes for Committee hearings; hearings cannot be held virtually under current House Rules. Further, as you know, questions regarding how Committee hearings will be carried out going forward—whether they be held on the Capitol grounds, virtually, or some combination thereof—are pending with the bipartisan task force.

I have been heartened by the positive feedback on the virtual events. The conversations between Committee Members and experts have helped inform the Committee's oversight of the Trump Administration's response to COVID-19.

At my direction, my staff told your staff last month that that I am open to having bipartisan, public facing virtual events and asked you to send any ideas for topics of bipartisan interest for future bipartisan events. That offer, to work together, remains open. At the same time, should you choose to host virtual events of your own, you may want to consult guidance provided by the Committee on Administration and avail yourself of the platform the Chief Administrative Officer has made available at no cost.

I welcome further discussion on Republican participation in virtual, public events and hope that, in the not too distant future, the House will adopt rules on how to proceed with official Committee hearings during this unprecedented time. Thereafter, I look forward to having our Members participate in a Committee hearing, where we can receive testimony from Administration officials with respect to the COVID-19 pandemic in Committee.

Best Regards,

Bennie G. Thompson
Chairman

The CHAIRMAN. Mrs. Lesko.

Mrs. LESKO. Thank you, Mr. Chairman.

And thank you. It is good to see both of you.

I am going to oppose this resolution for a number of reasons; many have been stated already. There are a lot of unanswered questions, I think, but I won't go into that.

Mr. Davis, let's say there is a committee that is going to do some major legislation. Let's say it is impeachment, let's say there is more impeachment. Do you have a concern that there will be lawsuits filed because the question of constitutionality is not clear, as evidenced by the different unanimous consent—you have one constitutional lawyer saying it is constitutional, another one saying it is not constitutional. Do you have concerns about that?

Mr. DAVIS of Illinois. I do have concerns, Mrs. Lesko. And thank you for the question.

In your example, what you are referring to with an impeachment committee hearing, maybe the Judiciary Committee, for example, you would assume that that remote technology then would be used during that markup process.

If you look at the plan that was submitted and given to the bipartisan task force during our first meeting—everything that was laid out in that plan was laid out during that first meeting. And Mr. Cole and Leader McCarthy and I specifically say we have some concerns about that markup process, specifically, number one, because of the constitutionality disagreements that we may have with others in this room and others that may be in the legal profession.

Mrs. LESKO. Thank you.

And, Mr. Davis, do you have any other comments you would like to make in relation to any of the previous comments?

Mr. DAVIS of Illinois. Well, Mrs. Lesko, thank you.

And thank you, everyone, for the opportunity to be here and communicate our issues and our concerns with this.

Let's be clear: This is a process that will fundamentally change the House. I do appreciate Chairman McGovern, Leader Hoyer, and all of the members of this committee. Everybody is here to solve problems. We have a fundamental disagreement on this process and how it should move forward.

We do not oppose, as Republicans—and you can see in the plan; this was submitted for the record—we do not oppose remote hearings, we do not oppose utilizing technology. We just would like to see it done in a fair way. And the list of concerns coming from our ranking members of how it may already have been abused, unintended—it is the unintended consequences.

I know everybody on this dais and here at this table would likely be offended by the abuses that our ranking members have witnessed already with remote technology. That is why we laid out a clear and concise path to implementing technology for hearings, so we don't see the abuse. I would like those to be taken into consideration.

I know this is a hearing, Mr. Chairman. I know you are going to have a Rules Committee process, where amendments to this piece of legislation are going to come forward. I certainly hope you take into consideration the debate and discussion we had here

today, as those amendments come to each and every one of you. And let's work together to make this rule better.

You are going to pass this rule because you are in the majority. You are going to implement this. We get that. Let us have our voice throughout the rest of the day in this room, and let's see some amendments that are going to be offered by the minority put into this rule to make it better and to make it more fair.

And I do want to clarify some things.

Yes, the United States Senate does have a proxy process, but that proxy process, unlike the rule that is being debated today, does not allow a proxy vote on the Senate floor. That is something that this rule will allow for today.

That is why we have some constitutional concerns. That is why I think you are going to see any piece of legislation move forward going to have to go through the courts. Somebody somewhere will file a lawsuit, and it will go through the court system.

But let's also remind the American people today, in closing, that this Congress has not stopped working. This Congress just a few short weeks ago had 300 Members that came out here.

I do understand and I share the concerns of my colleagues in this room about staff, which is why we worked in a bipartisan way before this crisis to get equipment to every office so that every office was ready in case they needed to telework. And they did, and it is working great. We want to protect the staff.

And the debate on testing is not just about testing Members. It is about setting up a process in a bipartisan way where we can ensure the safety of our staff and the people who work in this facility when we are not here. I certainly hope that is something that we can debate and discuss as we move forward and as we see testing capabilities increase in this country every single day. Let's protect the people who protect this House.

But let's continue to work in a way that we showed the American people just a few weeks ago and a month ago when we put forth the CARES Act and the updated CARES Act. That is what we should see here today.

And, unfortunately, our task force did not come up with a bipartisan agreement. I certainly don't begrudge the people who were on that task forth, even Chairman McGovern, who offends me by wearing that Patriots mask. Geez, you know? Although, you know I am a Raiders fan, Mr. Broncos Fan. I would be more offended if it was a Broncos mask.

But, in the end, we wanted to come up with an agreement. Today is not an agreement. It is not bipartisan. I am certainly regretful of that. I certainly wish we could have gotten something like that in place. But, in the end, we have had our voice heard today in this hearing room. I appreciate that opportunity.

And, again, I reiterate: The voices of my fellow Republicans that are going to come offer amendments behind me, I certainly hope that you take their suggestions into consideration and make this bipartisan before it gets to the floor.

And thank you, Mrs. Lesko, for your questions.

And I yield back.

The CHAIRMAN. I thank you.

Just for clarification here, I mean, the question Mrs. Lesko asked was about the constitutionality of committees.

Why would that be a constitutional question?

Mrs. LESKO. Actually, sir, my question—if I could speak?

The CHAIRMAN. Yeah.

Mrs. LESKO. It was just on constitutionality. Let's say another impeachment thing—

The CHAIRMAN. Right, but—

Mrs. LESKO [continuing]. Goes on and there is a vote on the floor.

The CHAIRMAN. But, I mean—

Mrs. LESKO. Is that—

The CHAIRMAN [continuing]. Votes on the floor are one thing, but in terms of committees, they are creations of Congress. They are not, you know, creations of the Constitution. So I think there is a distinction.

Mr. HOYER. Mr. Chairman, could I make an observation?

The CHAIRMAN. Yeah. Put your mic on, though.

Mr. HOYER. That would be better.

The Patriots are not playing. The Broncos are not playing. The Nationals are not playing. The Yankees and Red Sox are not playing. Why are they not playing? Because they have determined to bring people together in large numbers is dangerous. That is all this rule recognizes.

And I think we can work together. This is not about party or faction or philosophy. This is about how we can safely exercise our duties with a confidence that it is, in fact, Hoyer's opinion that is reflected, not someone else's opinion. I was elected by 750,000, just like the rest of you, and they want us to reflect their opinion.

We are just talking about what kind of technology, whether it is a—and when I use that example, you know what happens. We see it on the floor. What I am using is—I am putting it in. You know, I am using your arm. You stick it in, but you do what I say. That is what proxy voting is. Now, it may be a thousand-mile-long arm. I get that. But there is no difference in terms of character.

That is why—you know, Maryland—I grieve—I use this in my graduation speech, which I am giving on the 22nd, about—we have a young man whose name is Cowan, Jr. He lives in Bowie, in my district. One of the great guards in America. He didn't get to play in the Big Ten finals. He didn't get to play in the Final Four. He is a senior. He won't get that opportunity again. Why? Because millions of people who had a lot of money at risk decided it is not safe. And we want to keep people healthy and safe, not just us. As Mr. Perlmutter said, he is going to go back to Denver.

And I tell you as passionately as I can, I don't want, in any way, the use of this technology to diminish the rights of the minority any more than I want it to enhance the rights of the majority. This is not about Democrats and Republicans. It is about our institution and having it on the field at a critical time in our history.

Thank you very much for giving me this opportunity.

The CHAIRMAN. Thank you.

Let me yield to a constitutional scholar, Mr. Raskin from Maryland.

Mr. RASKIN. Mr. Chairman, thank you very much.

And I want to thank the majority leader for his very thoughtful comments and also my friend Mr. Davis for what he has said today.

I actually want to pick up with something that Mr. Davis just said, where he said that the rule threatens a fundamental change of Congress, an institution. And I think it is the coronavirus that has already fundamentally changed this institution and Congress, just as it has fundamentally changed the Government of the United States, society, culture, economics. We have 82,000 of our fellow citizens who have died already. We have tens of millions who have been thrown out of work. We have seen massive shutdowns in the economy. So it is the coronavirus that is transforming everything. We need to respond.

As my friend from Colorado, Mr. Perlmutter, says, this is all about the continuity of government. What are we supposed to be doing? Well, it is all summed up in one sentence in the Preamble of the Constitution: "We the People, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and preserve to ourselves and our Posterity the Blessings of Liberty, do hereby ordain and establish the Constitution."

And the very next line says that all legislative powers belong to the Congress of the United States. The sovereign power of the people to create the Constitution and the government flowed immediately to us in Congress and gave us the power to fix the rules of our own proceedings, consistent with particular constitutional parameters.

Taking the ayes and the nays: There is nothing in this rule that violates the constitutional requirement of taking the ayes and the nays. Consistent with the quorum requirement, there is nothing in this rule that offends the constitutional quorum requirement.

You know, if some people object to the use of the proxy—well, let me say this first about the proxy rule, because I would have gone all the way with the technological rule, but the proxy rule is perfectly constitutional.

And I found the conversation between Mr. Cole and Majority Leader Hoyer uplifting on both the process and the substance, because they agreed that there was a real effort to try to arrive at a bipartisan judgment. And sometimes it just doesn't work, and that is why we have voting. And the Framers of the Constitution understood that. We even have voting on the Supreme Court where they are just interpreting particular language. But in the final analysis, if you can't agree unanimously, you vote. That is how we do it in democracy.

And so the process was one where there was a good-faith effort on the part of Democrats, there was a good-faith effort on the part of Republicans, but the majority felt that we need to put a rule in place, an emergency rule, to deal with this terrible crisis that the country is in.

And, on the substance, I think I also heard them both agree that this is a rule that doesn't benefit the D's at the expense of the R's or the R's at the expense of the D's. It is just a rule that allows Congress to continue to meet and to function. That is what it is all about.

So, for me—and I was asked about it by members of the staff and by the chairman. And although I favored moving towards a technological—you know, a voting-by-distance technology solution, I said that the proxy voting is fine so long as the person who is the proxy exercises no discretion and no judgment. They are acting like a letter carrier. They are delivering a letter. That is all.

And I have both a constitutional vested interest in that and I have a personal vested interest in that because I live 25 minutes away from the Capitol—these days, it is more like 18 minutes—and Members know that. So, not only do I know I will be called, I have already been called by Members, saying, “If it comes to this and we pass this, would you be willing?”

And these are Members who have expressed some of the fears that our distinguished colleague from California has expressed. It is people who have members of their family who are medically vulnerable. It is people who are not sure the transportation will be working for them.

But I tell you, my—and I believe that every Member of this body who is asked to be a proxy will act in utter 100-percent good faith, whether it is a Republican or a Democrat or an independent. I think we might have a couple of those now. Every one will act in strict accordance with the instructions of the person who asked them to cast their vote for them.

And not only that, Mr. Hoyer properly reminds us that it is a matter of public record. Everybody is going to be able to watch it. It is a perfectly transparent process. And if there is any departure from it, the Member whose vote is miscast will know immediately and will be able to call and protest and get it changed.

And I cannot believe that anybody in this body would think it is not a violation of rule I of our Code of Official Conduct to deliberately miscast a vote. It says that a Member shall behave at all times in a manner that shall reflect creditably on the House. Would anybody think that it reflects creditably on the House to deliberately miscast a vote in the proxy rule adopted, I hope, today? I don't think so.

Having said that, my reluctance is being a local Member and knowing that—you know, I think about “Romeo and Juliet” and how one of the major themes in Shakespeare is failed communication. The whole plot in “Romeo and Juliet” turns on the failure of Friar Lawrence to get Friar John to deliver the message to Romeo that Juliet has just taken a sleeping potion, she is not really dead. Remember? But Friar John never delivered the letter. Why? Because he was stuck inside because of a plague, because of a pandemic, and he couldn't get the message to Romeo. So he finds Juliet, he thinks that she is dead, he commits suicide, and then she commits suicide. So things go wrong.

Now, things go wrong with technology too, and I understand that. But I do think that the committees will be able to operate very well under this rule. And I think over the last several weeks, by necessity, the Congress of the United States, like the rest of the country, has gotten a lot of practice on how to use Zoom and Teams and all of these different technologies. And, again, those are open, those are public, they are transparent, and people know if there is funny business afoot.

I do think that is the direction ultimately we have to get to. And if I am called upon to be a proxy, I will do my very best to get here on time, to be here and to act consistent with the—absolutely consistently with the instructions I have been given. But, you know, my real fear is just people not making it for some reason. And that is my only hesitation about it.

But, look, we are living in a dramatically imperfect world right now, and I am very happy to support this rule. I think that the Constitution demands it. The Constitution, Justice Jackson said, is not a suicide pact. We don't have to go down the drain together. We can make the Constitution work.

There is a wonderful passage from Jefferson where he said he deplores the sanctimonious reverence with which some people regard the way things were back when the Constitution was written. He said that all of us have the same potential wisdom and knowledge of the Founders, but we have something they don't have, which is the experience of living in our own times, and we have to adjust our practices, our policies, and our institutions to the requirements of our own time. And that is why I am very happy to support this resolution.

I yield back.

The CHAIRMAN. Thank you.

Ms. Scanlon.

Ms. SCANLON. You know, just thinking of Mr. Raskin saying we can't always be wedded to the practices of the past. When the Constitution was written, Ms. Shalala, myself, Mrs. Lesko, and Mrs. Torres wouldn't be here. So Congress must change with the times.

You know, we were here 3 weeks ago today to debate this rules change that would allow the House to do the people's business while complying with medical advice and working remotely.

Three weeks have passed. Some things haven't changed. Our colleagues across the aisle are still opposed to a rules change that will allow the House to do its job while reducing the risk to Members of Congress, our staff, the Capitol Police, our families, and the communities that we serve when we go home.

The other thing that hasn't changed is we still don't have enough testing, PPE, or vaccines to be able to control this pandemic.

Some things have changed in the 3 weeks since we were here last discussing the same thing. In the three counties that I represent, in southeastern Pennsylvania, the COVID-19 infections have swelled to over 26,000 infections and the number of deaths has doubled. We are now approaching 2,000 COVID deaths in those three counties—that we know of. We know that it is greater because there are a lot of suspected deaths that can't be confirmed because we didn't have testing.

I have been in daily contact with our healthcare providers in that region, and they are hopeful that infections have begun to decline. But they stress that will only continue if we maintain our vigilance, maintain social distancing, and implement a comprehensive testing program.

Here in D.C., infections have not yet begun to decline. And it is dangerous to expose Members, staff, families, and communities to a virus that is so insidious it has even invaded the White House

despite the extraordinary testing and precautions that have been put in place in that workplace, if nowhere else.

Congress has provided the administration with the funding and the authority to develop and implement the comprehensive testing and Federal guidance that Americans are begging for. Now, we can't force the President to use those resources any more than we can force him to wear a mask. But if the President won't do the responsible thing and lead by example, Congress can. We can wear masks, we can lead by example, and we can follow the advice of medical experts.

We don't have time to waste on trumped-up process arguments while lives are in the balance. We can work remotely, and so we must. I strongly support this rule change, as I have for the past several weeks, and I look forward to voting on it.

I yield back.

The CHAIRMAN. Thank you.

Mr. Morelle.

Mr. MORELLE. Thank you, Mr. Chairman.

I apologize for repeating some of what my colleagues have said, but I think this is a critically important subject, as evidenced by the fact that the majority leader is with us. So I do want to take a moment to just sort of make some comments about what we propose to do here.

And I do want to thank you for your extraordinary work on this. As on all matters before this committee, you approach it with incredible professionalism and bipartisanship and fairness. And I appreciate what you do, and Mr. Cole, and I certainly appreciate the majority leader and Mr. Davis being here this afternoon.

You know, when we did have a conversation—we have had one remotely on this committee, and I expressed some reservations in that conversation. I have expressed reservations publicly and privately about changes, significant changes, to the legislative process. I, you know, acknowledge I am a traditionalist. And although this is my first full term in the House, I have a background in legislative bodies at the county, State, and now the Federal level.

And so I always worry about, what is the character of the legislative work? It has been discussed by others here that, you know, much of what we do and the conversations we have are conversations like this, together. And that does inform our work and does have a significant impact on the work we do.

I also, you know, have concerns about the precedent-setting nature of what we do and whether or not the precedents we set in some way impact in a negative way the work that we do.

And then I also expressed my concern about the security of the technology.

But, at the end of the day, for me, there are really two, sort of, central questions. The first is, what is the nature of the challenge we face? If this were a small challenge, if it were an inconvenience, then obviously I would be rightly, I think, concerned about significant changes.

And then the second question is, if the challenges we face are so significant that it affects our ability to do our job, then the second question, to me, is, what is the nature of the resolution to correct or to address those challenges and that problem?

And so, you know, as it relates to the first, I mean, this is obviously undeniable, and I think all of my colleagues have expressed as well: 84,000 deaths from COVID-19 just in the United States, millions infected, and we continue to face challenges from a public health perspective; we face challenges in terms of commerce and our economy. Unemployment numbers may reach 25 percent of Americans. Thirty-six million Americans have applied for unemployment insurance. And to the majority leader's point, even things that—let's be clear, major sports is major business in the United States, and it has completely ground to a halt, as so many industries have.

So this is undeniable. I mean, there are no challenges that we have faced in our lifetime that come anywhere close to the challenges that this faces. And it does occur to me that Congress must respond to it.

And so I also think that is sort of common sense. What would people that I represent, what would they say if posed with two, sort of, questions? First, do they decide that we insist on the status quo and not have a functioning Government of the United States? Or can we use available means and available technology to respond to the crisis in an appropriate way? I think all of us would probably agree that, if you could achieve the second, the second option would win overwhelmingly by the American public. They would want us to use available means in an appropriate way to respond to this crisis.

And I do note, just parenthetically, that a number of States have moved to remote voting. Some have constitutional problems in their States, but many that do not have addressed this—the State of Oklahoma, the State of Pennsylvania, the State of South Dakota, Wisconsin, Vermont, New Jersey, even my home, the State of New York.

And I often used to say, no disrespect to the Members here, but the New York State Assembly is the oldest, longest-serving, democratically elected legislative body in the world. It actually predates the House of Representatives. And they have made changes, despite long traditions and history, that allow them to vote remotely.

So we are not alone. In fact, in some ways—we are now 2 months into this. I wouldn't call this a precipitous response. In some ways, you might argue that we have—I guess you could look at it as we have taken our time to prudently think about this. Others might say that it is too slow. People on this panel might believe that.

So, in my mind, answering the first question, that this is clearly a challenge of unprecedented nature, the question then is, does the resolution before us meet, at least in my mind, the question of appropriateness, and is it, in effect, a proportional response? And I just want to, if you will permit me, just go through how I view this.

First of all, the fact that this is a temporary rule and it does not permanently change the rules of the House I think is an important distinction to make and an important decision has been made to move ahead. That does not hold any future Congress to the rule we impose here, and I think that is appropriate.

We will be able to judge whether or not this rule bears being put into the permanent rules of the House, but that is not a decision we make today. We make it with the ability to look back, having

watched what happens and what unfolds over the ensuing several months of this Congress, to make that determination, and I think that is entirely appropriate.

Secondly—and I thank the Chair for this very much, and the Members and the majority leader—it is very narrow and very specific. It is a public health emergency due to a novel coronavirus. I mean, that is about as narrow and as specific as you could possibly say. I guess the only other thing you could have put is “COVID-19,” the specific year in which that virus was found. But since we are in 2020 and you can’t—this is only a temporary rule. It applies to this epidemic, which I think is entirely appropriate as well.

The process to trigger it: notification by the Sergeant at Arms in consultation with the Attending Physician, the Speaker in consultation with the minority Leader, may designate a period—and these are 45-day increments, which, again, seems to me entirely appropriate.

As I read the rule, at some point that the Sergeant at Arms concludes, in consultation, again, with the Attending Physician, that an emergency no longer exists, the rule terminates, or the process terminates.

So, again, I think this is very narrow, it is very thoughtful, even to the degree—and I appreciate always the comments made by my good friend from Georgia relative to how a Member shall cast a vote.

I think on page 6, lines 6 through 11, it is pretty clear. Following instructions, a Member casting a vote or recording the presence of another Member as a designated proxy under this resolution shall cast, vote, or record such presence pursuant to the exact instruction received from the other Member under paragraph 1.

It doesn’t say “may” cast, that you use your independent judgment because someone who has designated you as the proxy trusts you enough to do it, although I hope that is the case. “Shall” cast, not “may” cast. “Shall” cast. That is the rule that we are living under.

And I would hesitate to believe that any single Member of this House, duly elected, would ever violate the rule of the House by casting a vote that is not an exact instruction received from the Member who has designated them as a proxy.

And what I would do—and, you know, I would certainly ask the majority leader if he wants to comment on it. But what I would do if I had designated a proxy, I would tell the majority leader in advance who I had designated and make sure that the majority leader knew how I intended to cast those votes.

Now, it is true, motions come up, but they will be given ample time for those instructions to be relayed. But that would allow the majority leader to make sure that those votes are cast in accordance with the rule.

But I go back to my earlier point, which is, I don’t believe any Member of this House would ever violate the rule of the House and would not cast the instructions that have been given, the exact instructions. And that is what the rule suggests.

Mr. WOODALL. Would my friend from New York yield?

Mr. MORELLE. Yes, sir.

Mr. WOODALL. While you are following that line of questioning, you raise an interesting point about unexpected votes.

It had been my assumption that, if I was carrying proxies and an unexpected vote came up, that those Members would trust me, and I would cast my vote—I would cast the vote as I would anticipate—

Mr. MORELLE. No.

Mr. WOODALL [continuing]. They would want it cast. But—

Mr. MORELLE. No. I believe—and I will defer to the majority leader or the chair. I don't believe that is how it works. I think what would work then is, again, you need written instructions, exact instructions, given by the Member who has given the proxy.

So, if you were my proxy—and I would certainly trust you to carry my proxy, Mr. Woodall—if there were a motion that came on the floor, a motion to recommit or some other motion before the House that was not anticipated, you would have to be required—and I am sure the House would allow enough time for this to happen. You would be allowed—there would be enough time to allow me to give you exact instructions on how that vote should be cast before the vote is cast. Which will slow down the process, I don't think there is any question about that, but we want to get this right.

And I would defer to the majority leader or the chair. I believe that is what is anticipated.

Is that right, Mr. Majority Leader?

Mr. HOYER. I think the rule that Mr. McGovern has put forward is, specifically, you have to instruct on every vote. It is not that I would trust you to know what I want to do. You have to have, either in writing or electronically, in some communication, whether I send you a text, whether I send you an email, what vote I would cast—not what you think I might cast, but what vote I would cast.

And that is why it is specific, exact instructions on how to vote. Because we don't want—this is you voting. This is not—as this example I gave, his hand is putting my card—because we are all jammed up—in the slot, which is technically, of course, not allowed, but it is my vote, not somebody else's.

Therefore, we would contemplate only acting if you got specific instructions. And if you didn't get instructions, you could not cast a proxy.

Mr. MORELLE. And to go further, I believe, in the rules: Announcing instructions immediately prior to casting the vote or recording the presence of another Member as a designated proxy, under this resolution, the Member shall seek recognition from the chair to announce the intended vote or recorded presence pursuant to the exact instruction received from the other Member under paragraph 1.

I think it is pretty clear that there is no—this isn't intended, as I understand it—and I think this is appropriate. It is not intended to give license to the designated proxy to cast votes as he or she thinks is appropriate. It is to allow them to do, physically, what the Member who has designated them wants to be done as though they were there physically. And so you are not giving anyone license to do anything or to use their judgment in place of yours.

And I assume—and, again, people can correct me. But if I am not available to give that exact instruction, then I would not be casting a vote. And any Member who casts a vote without my exact instruction would be violating the rules of the House and I think would suffer the sanctions and the consequences of having violated the rules or any rule of this House.

Is that right, Mr. Majority Leader?

Mr. HOYER. That is correct.

Mr. MORELLE. So I will just conclude this way. And I appreciate the indulgence of the chair. I do think the resolution before us is measured. I think it is proportional. I think it leverages appropriate and available technology. I think it meets my concerns over security. I think it is narrow. I think—and this has been repeated, and I firmly believe this—I do not believe it advantages either side in terms of a partisan divide; it simply allows those Members to do what is right.

So I think this creates a method to move us forward and protects not only the prerogatives under Article I—and prerogatives are important—but the duties and obligations and responsibilities that we have under Article I of the Constitution. And so, therefore, I will support the resolution.

And I appreciate all the incredible work done by all my colleagues on both sides. And I do want to again particularly thank the chair for his great work, as well as the majority leader. So thank you so much.

The CHAIRMAN. Thank you very much.

Ms. Shalala.

Ms. SHALALA. Thank you, Mr. Chairman. I appreciate the quality of the discussion that has taken place, and I have deep respect for this institution and for its leaders.

This virus is vicious. Most of our States are opening up without meeting the CDC guidelines. Nothing is winding down. And those of us that had to go through airports can describe them as scary.

We have two responsibilities here. The first is to do the people's business, and the second is to save lives. We have a responsibility to continue to do the people's business, and we are responsible for the lives of people who work here.

This proposal is minimalist, as far as I can tell, so that we can do our jobs. And we must do our jobs. In my State, 2 million people have applied for unemployment. Less than half have received it. We have a legacy system that was designed to say "no," and our poor new Governor is trying to fix it. Thousands of really small businesses applied for PPP in my district, and very few got it.

Oversight? We need oversight on unemployment insurance and the SBA, at the minimum. So virtual oversight hearings are critical on the trillions that a bipartisan Congress approved.

Mr. Chairman, I can be just as tough with a mask on as without a mask. My personality doesn't change if I have to look at a screen. But my second responsibility, to save lives in my community, with all of you in every community, and I will not put my hardworking staff or the others that serve and protect us here at risk. So, if I have to choose between a mask and a screen, I choose the screen.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. Thank you very much.

Are there any questions?

Seeing none, let me thank the distinguished majority leader for being here and for his work on the task force. Let me also thank Mr. Davis, Ranking Member Davis, for being here all of this time and for his work on the task force.

And let me just say as strongly as I can, Mr. Davis, that I strongly disagree with you and emphatically disagree with you on the New England Patriots. As my late father would say, you hate the sin, love the sinner. So we will work things out. But I appreciate you being here.

And I don't know if anyone has any final things to add, but—

Mr. HOYER. Mr. Chairman, I just want to say that I think the Congress is blessed by having someone as chair of the Rules Committee who is as fair as any of our Members, who wants to make sure that the process is fair. Obviously, he wants the result that he wants, but he wants to make sure—and I agree with him—that the process of getting to a decision gives everybody a fair shot.

And we want to do that in this process, but we do want to make sure that the Congress can, in fact, act at a time of great crisis.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Davis.

Mr. DAVIS of Illinois. Mr. Chair, Leader, my fellow colleagues, thank you again.

I would just like to remind the committee, following us today are going to be Members of our party offering amendments. I certainly hope you take into consideration our debate today, and I certainly hope you take into consideration their amendments to make this rule much more bipartisan than it is right now.

So, with that, thank you, Mr. Chair. I still don't like your mask with the Patriots.

The CHAIRMAN. Get used to it.

But, anyway, nice to see you. You are dismissed.

And now I would like to call up our next panel: Mr. Bergman, Mr. Bishop, Mr. Byrne, Mr. Jordan, and Mr. Pence.

To maintain health and safety, please take a chair in the second row. Staff will escort you to your chairs.

Mr. PERLMUTTER. Mr. Chairman.

The CHAIRMAN. Hold on just a minute.

Thank you.

Yeah, Mr. Perlmutter.

Mr. PERLMUTTER. Thank you. Mr. Morelle's discussion reminded me of something I meant to put into the record, and we discussed it at the virtual conference we had a month ago.

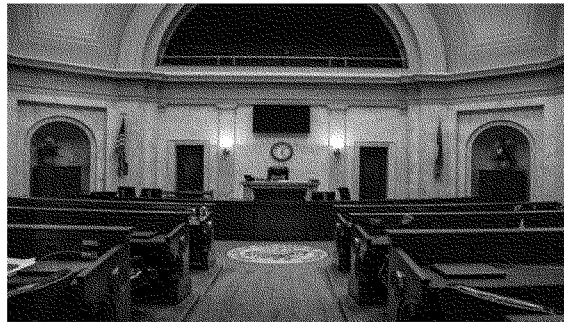
The National Conference of State Legislatures has compiled 17 States, the District of Columbia, Guam and the Virgin Islands that allow for some type of remote voting. And I believe the template for this current rule is similar to that that is being done in Pennsylvania.

[The information follows:]



Continuity of Legislature During Emergency

5/19/2020



Planning for a disruption in the operation of state government, and legislatures in particular, has been on the minds of the legislative bodies since the 1950s, during the height of the Cold War, and, in some cases, was provided for in state constitutions even earlier. Providing the legislature with methods to continue to work, or return to work, during an emergency is an important goal.

The threats to a legislature's ability to function may be as complex as an enemy attack or as seemingly mundane as the flu. In fact, pandemic flu is one of many catastrophic events that could affect state legislatures.

NCSL has compiled information for legislatures to consider in developing or reviewing a continuity of government plan.

Examine State Constitution, Statutes and Chamber Rules

A good starting point is to examine the state constitution for provisions that may help in designing a continuity of government plan as well as identifying provisions that could derail these efforts.

What to look for:

- A continuity of government (COG) authorization.
- Determine under what circumstances your COG authorization applies. Many emergency actions only occur “in case of enemy attack.”
- Determine whether the seat of government can be changed and under what circumstances.
- Determine whether quorum requirements can be changed or suspended.
- Determine whether legislative sessions are required to be open.
- Determine whether the legislature may meet remotely.

Continuity of Government Authorization

Continuity of government encompasses many aspects of the legislative process, from the way the legislature is convened in an emergency, to lines of succession for public offices, and the location where the session will be held. The authority to do many of these things resides in a state's constitution. While many constitutional provisions tie the trigger for these powers to an enemy attack, a few have broadened the definition to include other emergencies.

In 2019, for example, Washington voters approved a constitutional amendment to expand continuity of government authorization beyond “enemy attack.” The amendment added “catastrophic incidents” to the specified periods of emergency.

Another example is a joint rule adopted by the Colorado General Assembly, which sets out procedure during a declared disaster emergency.

Session

There are two main types of legislative sessions—regular and special (sometimes known as extraordinary). A regular session is the annual or biennial gathering of legislators, the starting date (and often, the length) of which is set by constitution or statute.

Unlike regular sessions, there is no specific timing for special sessions. They occur intermittently to deal with specific issues or topics. Usually, the scope of a special session—that is, the topics that may be taken up—is limited to the issues specified in the notice calling for the special session. Legislatures may be called into special session during an emergency.

In 36 states, the governor and the legislature have the ability to convene a special session. In the remaining 14 states, however, only the governor has that authority.

Due to the COVID-19 emergency, many legislatures suspended, postponed or temporarily adjourned their sessions. Others have met in special sessions. NCSL is tracking those actions here.

Emergency Interim Successors or Lines of Succession

Most emergency interim succession acts were enacted during the Cold War period between 1959 to 1963 as a result of increased tensions between the U.S. and the Soviet Union. During this time, state legislatures enacted laws to provide emergency successors (replacements) for legislators in the event an enemy attack occurred. Today, these acts have the potential for use with other emergencies, i.e., during a natural disaster or pandemic.

At least 12 states have a provision in constitution or statute for legislative emergency interim successors. Several other states have constitutional provisions for emergency interim successors for public offices.

Temporary Suspension or Modification of Quorum in an Emergency

“Quorum” is defined as the number of members of a deliberative body that must be present in order to transact business and to make its acts valid. Most often, that number is a majority of the membership. In four legislatures, there is a supermajority requirement. At least 13 states can change or suspend quorum requirements in an emergency.

Remote Participation

In normal circumstances, legislatures typically operate under a “you must be present” rule—that is, legislators must be physically present in committee or on the chamber floor to participate in debate or voting. The rationale for this rule centers on the integrity of the legislative process. Requiring members’ physical presence creates a comfort level that procedures can more easily be controlled and the public can witness debate and voting. State legislatures, however, more often allow the use of technology to facilitate public input into committee meetings.

In two states—Oregon and Wisconsin—specific provisions allowing the remote or virtual meeting of the legislature if emergencies exist.

In 2012, Oregon voters approved a constitutional amendment relating to catastrophic disaster. The amendment defined catastrophic disaster and grants additional powers to the governor and legislature. The approved amendment is set forth in Article 10-A of the Oregon Constitution. The language authorizing participation in session by electronic or other means is in Section 5.

Wisconsin’s constitutional provision on continuity of civil government (Article 4, Section 34) allows the legislature to “adopt such other measures that may be necessary and proper for attaining the objectives of this section.” Statute 13.42 was enacted under this authorization. The statute allows virtual meetings of the legislature and legislative committees when an emergency (or imminent threat of one) exists.

In March, April or May 2020, legislatures or chambers in at least 17 states, the District of Columbia, Guam and the Virgin Islands changed their procedures to allow for remote participation or voting. In most, if not all cases, these changes are temporary or tied specifically to the COVID-19 emergency.

They are:

- Arizona House (by motion)
- Arkansas House and Senate (HR 1001 and SB 2)
- California Senate (SR 86)
- Connecticut House and Senate (HJR 28)
- Hawaii Senate (SR 197)
- Kentucky House (HR 133)
- Louisiana Senate (SR 45)
- Massachusetts House and Senate (HR 4676 and Senate Report 2688)
- Minnesota House and Senate (Rule 10.01, SR 229)
- New Jersey Assembly (AB 3852 and AB 3850)
- New York Assembly and Senate (AR 854 and SR 3108)
- North Carolina House (HB 1044)
- Oklahoma House and Senate (SR 17 and HR 1032)
- Pennsylvania Senate and House (SR 318 and HR 834)
- South Dakota Legislature (announcement and arrangements)
- Utah House and Senate (SJR 16)
- Vermont House and Senate (SR 10, SR 11, SJR 48, HR 17 and HR 18)
- District of Columbia (B 23-718)
- Guam (R 323)
- Virgin Islands (No. 33-20-004)

Information Technology, Facilities and Operations, and Staffing

In addition to the constitutional provisions, statutes, and chamber rules that help facilitate the legislative process during an emergency, COG plans also may include other aspects of legislative operations. The following are three examples.

Information Technology. Information technology (IT) is the backbone of an organization, and planning for a disruption in operations is vital. As you consider what will be included in your continuity of government plan, it is important to remember that without IT capabilities in the event of an emergency, the plan likely cannot be carried out. For example, as noted above, some legislatures have provisions that allow them to meet virtually. In light of the COVID-19 crisis, legislatures are quickly adapting to these changing circumstances and using web-based virtual meeting tools or

5/19/2020

Continuity of Legislature During Emergency

teleconferencing for remote meetings. They are continuing to live-stream proceedings to facilitate virtual participation in the process. In addition, IT staff are supporting legislative staff and legislators as they continue to work from home.

Facilities and Operations. The state capitol is the “people’s building” and is the physical face of state government. Keeping the physical building open and operating can be a big challenge, especially in the event of an emergency.

Staffing. Legislative staff are integral to the functioning of state legislatures. They process legislation, conduct research, develop budget analyses, provide constituent support and a variety of other tasks.

131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000

Additional Resources

- Open Floor Sessions
- COVID-19: State Actions Related to Legislative Operations
- Continuity of Government in Constitutions
- Emergency Interim Succession Acts
- NCSL Blog: Dust Off Your IT Pandemic Plans

Copyright 2020 by National Conference of State Legislatures

Mr. PERLMUTTER. I would also like to have the record reflect that virtually every democracy around the world is now allowing for some type of virtual voting because of the novel coronavirus.

Thank you.

The CHAIRMAN. I thank the gentleman.

So I know you are all probably gathering support around an amendment to limit the 5-minute rule in the Rules Committee, but let me—I don't know whether anyone has a preference to go first, but, if not, we will begin with Mr. Bergman.

STATEMENT OF THE HON. JACK BERGMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. BERGMAN. Thank you, Mr. Chairman.

The CHAIRMAN. I think your mic is not on yet.

Mr. BERGMAN. There we go.

The CHAIRMAN. There we go. Okay. Welcome.

Mr. BERGMAN. Are we doing this alphabetically or by age?

Mrs. TORRES. Either way, you are first.

Mr. BERGMAN. Well, number one, thank you, Mr. Chairman and the Rules Committee, for allowing me the opportunity to speak today. I believe that the American people want to hear this dialogue.

I want to be brief. I am not a lawyer. I am not a constitutional scholar. I am just a Marine. Over 50 years ago, I swore an oath to, quote, "support and defend the Constitution against all enemies, foreign and domestic, and to bear true faith and allegiance to the same." That oath never expires.

"Honor," "courage," and "commitment" are not Marine Corps buzzwords. They are part of a belief system designed to instill confidence and achieve results at all times, but especially in stressful times, life-threatening times.

As just a fact, 35 years ago today by days—35 months ago by days, 14th of June, several of us were scrambling for our lives on a baseball field in Alexandria. So we were not worried about a lot that day other than making sure that we did the right thing for the right reason, and it was instinctive.

The actions that we take, the decisions that we make as the 116th Congress will be viewed, reviewed, debated, and discussed by future generations. When those of us privileged enough to be empowered by our constituents to vote on these important issues reflect back, will we see that the actions that we took built trust, built confidence, or diminished it?

And that trust is given to us, granted to us, if you will, by the American people. Either they trust us or they don't. Are we, as the House of Representatives, leading by example? Are we inspiring others?

You know, we will adapt. I heard, as I listened here for the last couple of hours, suggestions about how we can change the setup of the committee room. Some of us are used to setting up forward operations around the world in contended areas, are used to adjusting to the challenges and the threats of the day.

I know that we are better than what I have seen recently in the media, but I believe we, as a body, can come together and show the American people—show them that we can be socially distanced,

that we can be personally responsible, and that we can conduct our business here in Washington, D.C., in an appropriate, safe manner.

But what the American people want to see and need to see—they need to see us agreeing to disagree, being passionate about what we believe in, but, in the end, coming to a consensus, if you will, and making a decision and going forward.

So I oppose the proxy voting. We will adjust technologically, and we can do it safely, but we must do it aggressively, with the thought of actually what we have been chartered to do by the people who sent us here.

And, with that, I yield back.

The CHAIRMAN. Thank you very much.

Mr. Bishop.

**STATEMENT OF THE HON. DAN BISHOP, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF NORTH CAROLINA**

Mr. BISHOP of North Carolina. Thank you, Chairman McGovern, Ranking Member Cole, for the opportunity to testify—members of the committee.

It has been a fascinating experience to listen to your proceedings today because there are many Members here and, of course, your witnesses who have great experience, long experience in Congress. No one is more rank-and-file than me, elected last September, a member of the minority.

And I learned a great deal in the comments made by all, but one thing that kept ringing in my ears is perhaps, Mr. Woodall, something that you said in response to Mr. Hoyer or agreeing with Mr. Hoyer: that this is an unprecedented experience. And it is not.

Now, it is, Mr. Woodall, for your age, because you were born in 1970. But in 1968–1969, there was the Hong Kong Flu pandemic that killed 100,000 Americans and a million people worldwide. And at a population then of 200 million in the Nation, if you extrapolate it, according to the American Institute of Economic Research, it might be a 250,000-person death, if you extrapolate it.

And I heard a lot said by Mr. Hoyer and other Members and members of the committee that have well-voiced the fears that we all experience. But I think what is different about this situation is the way in which we are reacting to fear. Because it is not an unprecedented situation.

In 1968–1969, it is not even clear that there were any alterations in the proceedings of the Congress. In 1918, the Congress wasn't dissolved.

Unfortunately, what this bill represents is a failure of leadership when leadership is desperately needed, a loss of nerve when courage is called for.

Contrary—well, to Mr. Hoyer's point, this institution has always met in times of crisis. This House has remained open in the aftermath of the attacks on 9/11 and in 1861, with the Confederate Army a few miles away.

By refusing to let Members get back to the work we were elected to do, Speaker Pelosi and the Democratic leadership seek to enforce a vision of the House completely at odds with the vision of the Framers of the Constitution and, in the process, supplant the will of the people with the will of a liberal elite.

Given that, it is no surprise that, instead of a bipartisan recovery package supporting efforts of States to reopen, later today this committee will consider a bill that amounts to a socialist wish list masquerading as a relief package.

That failure of leadership, which this one exacerbates, reflects the simple truth that Members cannot represent their constituents without being here in Washington to debate, negotiate, and work with their colleagues.

Instead of considering commonsense proposals to allow all Members to perform responsibly the work we were elected to do, this proceeds with a radical change to House procedure that would upend 200 years of precedent and irreparably damage this institution. So-called proxy voting cheapens and dilutes the people's constitutional right to have their voices heard in this Nation's Capital.

I am here, ready to work with all my colleagues. And I will keep coming back to Washington every week, as safely as possible but confronting risk if necessary, to uphold the oath I took when I was sworn into this office.

Thank you for your patience. I yield back.

The CHAIRMAN. Thank you very much.

Our former colleague on the Rules Committee, Mr. Byrne, welcome back.

STATEMENT OF THE HON. BRADLEY BYRNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. BYRNE. Thank you, Mr. Chairman. It is good to be back. The last few hours have reminded me of all the fond memories I have of being a member of this committee.

I am here today to testify regarding H.R. 965.

We all have a responsibility to defend the Constitution and this institution. Members walked these halls hundreds of years before we arrived, and, God willing, they will continue to do so for hundreds of years after we are gone. The truth is, we are mere custodians of this building and this institution and the awesome powers and responsibilities that the Founders laid down for us. As Benjamin Franklin is said to have famously retorted, "This is a Republic, if we can keep it."

Republics have vanished in the past. The Roman Republic vanished when their legislative body, the Roman Senate, simply abdicated its legislative responsibility and let men who actually acted as dictators and then later emperors take over.

Today, it is my strong belief this committee will transmit a rule change to the House that is not only unconstitutional but will damage the institution of the House for years to come. I came back early to tell you I think it is a grave mistake, and I ask you to reject it.

The Constitution of the United States, Article I, section 5, makes it pretty clear that, in each house, a majority shall constitute a quorum to do business, but a smaller number may adjourn from day to day and may be authorized to compel the attendance of absent Members.

Now, why would they want to have that power to compel the attendance of absent Members unless they intended for a quorum to include the physical presence of Members?

Now, we have further proof of this. In the very first Congress, which was supposed to meet and did meet on March the 4th, 1789, in New York—one of the Members there, by the way, was James Madison, probably the most important person at the Constitutional Convention. They met, but they couldn't conduct business because they couldn't achieve a quorum. In fact, they met for day after day after day until April the 1st, 1789, when they finally got enough people there, physically, to constitute the quorum that the Constitution required.

Now, Mr. Madison didn't raise his hand and say, "Hey, we didn't require that." He sat there patiently, day after day after day, waiting for that quorum to arrive.

That was a pretty important Congress. That Congress created the Department of Treasury, created the Department of State, created the Department of War, created the Attorney General's Office, created the first Federal court system, and sent the Bill of Rights to the States for their ratification.

If that Congress, with people like James Madison in it, could wait for that quorum to get there, surely we can get our quorum today.

Now, I listened to the majority leader talk about the "quiet dogmas of the past," quoting President Lincoln. The Constitution of the United States is not quiet, and it is not dogma. It is the fundamental law of the United States.

By the way, President Lincoln used those words in his annual report to Congress on December 1, 1862, when he proposed one of the worst ideas he ever had, which was not to free the enslaved people of the United States, but to round them up, put them on boats, and re-colonize them to Africa. Thankfully, we didn't follow what he wanted to do. But it just goes to show, even great men can have bad ideas.

Mr. BYRNE. As you have heard over and over again, Congress has met through foreign invasions in the war of 1812, the civil war, two world wars, and by my count, three serious pandemics. In fact, during the 1890s and early 1900s, Washington was the hottest spot in America for typhoid fever. And up until 1950, because of the water around this place, Washington was subject to recurrent bouts of malaria.

So Congresses have met here for centuries in the face of disease and figured out a way to make it work without having to change their rules. And I did check with CRS to make sure we never changed our rules in light of those diseases, and we didn't.

I do not mean to make light of the serious issues that some members face in getting to Washington, D.C. now or the fact that some members may be simply unable to attend or face serious health risks if they do. However, the Framers already provided for this. They did not say we cannot transact business unless all were present. They were clear. Majority present would suffice. The fact that most of us are here today and probably arrived to Washington via air travel would be astounding to our forbearers, many of whom traveled weeks or even months to make it to a session.

Certainly, the Framers would probably never have imagined that even on an inconsequential vote it is not uncommon for 95 percent or more of the House to be present and voting. Despite all the chal-

lenges that we are presently facing with COVID-19, only 35 members missed the roll call vote 2 weeks ago. Again, the Constitution contemplates only 218 of us being able to make it, and we already provide a mechanism for members to enter into the record how they would vote had they been present. Yet the majority feels comfortable today effectively lowering the quorum requirements to a mere 22 members. Under the rule proposed today, only 22 Democrats to command the House to pass or do whatever you want.

I know many will say it is unfair for me to demand members come to Washington right now. They will say it is dangerous or a health risk to others. Let me say this. I have interacted with, in my district, over the last couple of months, people who have been forced to go to work day after day after day. Healthcare workers, people in the agriculture industry who produce our food, the people who process our food, the people who transport our food, the people stocking on the shelves and check us out, people who work in pharmacies, people who work in utilities. And I could go on and on and on, and they show up every day without near the protections that we all have here today and they do their job. And they have a right to expect that the House of Representatives will show up like they do and do our job.

The truth is that the quorum requirement and the quorum point of order is an important check on abuse of power. And remember, it was abuse of power that did in the Roman republic. At the Constitutional Convention, no less an authority than George Mason called the thought of a less than majority quorum to be dangerous, remarking that it, quote, would allow a small number of members to make laws, close quote. What would George Mason say about the Congress today?

In the last 3 months, some of the most monumental pieces of legislation passed in decades, and they have appeared out of air from the Speaker's office. No hearings, no markups, no amendments accepted. We have already spent over 11 percent of our GDP in the last 3 months under this process. Now we are about to lay upon the House another bill that counts for a 70 percent growth of last year's entire Federal budget under the same manner. We are living in a House where the work product is coming from the very top and being thrown upon the rest of us, and we are abdicating our responsibility to legislate.

If we are honest with ourselves, I believe no one would challenge me when I say the rights and individual prerogatives of the members of the House have been steadily shrinking for decades. It was true when the chairman eloquently made this point when he was the ranking member of this committee and it is just as true today. Too much power has been taken away from individual members in committees of jurisdiction and transferred to the Office of the Speaker. With all due respect, this proposal today reinforces what is fast becoming a complete transfer of the power of the institution to the Speaker.

If the committee and amendment process is unnecessary to make laws, so is the presence of members to even bother to come and vote. Your proposal says to members, don't come to Washington. It has already been decided.

That address from Mr. Lincoln to the Congress as I say occurred on December 1, 1862. We were in the middle of a civil war. Ten days later, the Battle of Fredericksburg occurred 50 miles from here. There were 18,000 casualties in that battle. It was a decisive victory for General Lee and the confederacy. And there were many Members of Congress that were worried that General Lee would march that same Army up here and take the capital of the United States. And yet the Congress continued to meet here in Washington, D.C. Perhaps these prior Congresses were just made of sterner stuff or perhaps they had an understanding of their obligations as Members different from ours.

I am concerned about this disease, I take it seriously and I take precautions, but I am not afraid of this disease any more than those people I talked about who show up day after day after day and do their jobs that is so important to us, any more than they are afraid enough to not show up for work. If they can show up for work and do their job, Mr. Chairman, I think we can show up for work and do our job.

And if I can make one last point. Mr. Cole said something that I hadn't thought about. He is right. There are times when I am in conversations here in Washington with my colleagues on the other side of the aisle and they tell me things that change my mind. And if we are not together, we are not going to have those opportunities as a practical matter. We will lose that opportunity, and we will lose the ability to have the sort of deliberative process that makes better policy.

When we got the second coronavirus bill that dealt with paid leave, paid sick leave, it showed up without any committee work, including the committee on which I sit, which is the committee of jurisdiction. We were given less than an hour to look at it and then vote on it at 1 o'clock in the morning. And then we found out there were so many problems with it, they had to pass a 90-page technical corrections bill. Perhaps if it had gone through the regular process and we had done our job, that that bill would have been right the first time it came before us instead of being shoved down our throat.

With that, Mr. Chairman, I yield back, and I appreciate it.

The CHAIRMAN. Thank you.

Mr. Jordan.

STATEMENT OF THE HON. JIM JORDAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. JORDAN. Thank you, Mr. Chairman and ranking member. Three weeks ago, in a critically important memorandum, the Attorney General of the United States said this: The Constitution is not suspended during a crisis. And amen to that. And guess who agreed with him? Guess who agreed with him just last month? The Speaker of the United States House of Representatives said this: There is a constitutional requirement. We vote in person. Today, we are changing that. Today, we are not following the Constitution. In fact, I think we are trying to suspend the Constitution by allowing proxies to establish a quorum.

The Supreme Court was very clear. In the Ballin decision, the Supreme Court said this: Members have to be present. Constitution

requires the presence of a majority, and when that majority is present, the power of the House arises. You have got to have a majority present. You can't—you can't phone it in. You can't mail it in. Present means present. You got to be there. Frankly, you got to be here in order to conduct the business of the American people.

And understand what is in this proposal. One member can have 10 proxies. You know what that means? 22 members with 10 proxies in their back pocket can conduct the business of the American people. Twenty-two, 5 percent of the United States House of Representatives. Five percent can conduct the business of the American people representing all 330 million?

You can't phone it in. You can't mail it in. We are supposed to be present to do the business of the American people. Article I, Section 4 mandates that the Congress, quote, must assemble at least once a year. We do this at the start of every Congress. Article I, Section 5 requires Congress to physically congregate to vote to change where it sits. So if we are going to change where we sit, we got to come together. It is, frankly, what you are doing tomorrow, what the majority wants to do tomorrow.

Article I, Section 5 requires a recorded vote on any question at the desire of one-fifth present. The people required four recorded votes stand up on the floor. We do this every vote we take on the House floor. Twenty percent. How can that happen if you got 22 members with 10 proxies, how can you even have that?

Article I, Section 6 says this. It protects members from arrest during travel to and from their attendance at a session of their respective House. Well, golly, if you can mail in your vote, why would the Constitution say you have to be protected from being arrested coming to vote? You could just mail it in. That makes no sense.

All of these provisions envision members physically traveling and being present at the seat of the Federal Government to do the business of the American people, but we are going to change all that. We are going to change all that. The Constitution leaves no room for what we are trying to do here. It is so wrong. Farmers are planting crops. As my colleagues mentioned, farmers are planting crops, truckers are moving goods, grocers are stocking shelves, frontline healthcare workers haven't missed a day, law enforcement are busting their tail every day doing their job, but somehow Congress can't. Nope. Nope. We are going to phone it in. We are going to mail it in. We are going to ask a coworker to do our job and vote for us.

This is a dangerous place we are heading and everybody knows it, but the majority's going to go ahead and do it, and that is what ticks me off. Proxy voting, Zoom, WebEx, House party meetings and hearings, quasi hearings, remote depositions. Remote depositions? The example this sends, the precedent this sets is wrong, and I think even the majority knows it, but they are going to pass it anyway. And that is why the country gets so ticked with this place. Let's just get here and do like we are doing today. I testified for an hour in this very room 3 weeks ago. We are all testifying here, keeping our appropriate distance, doing it the way we are supposed to do it. It isn't going to be easy, but doing things the right way is never easy.

The hard way is usually the right way, so let's do it the hard way. Let's do it the right way. Let's do it the way we have been doing it for 200-plus years instead of phoning it in and mailing it in.

I yield back.

The CHAIRMAN. Thank you very much.

I just would like to remind the panel of the advice of Dr. Monahan, that if the discussion becomes especially high spirited in nature, that we should wear masks because we release virus particles onto the microphone.

Mr. JORDAN. Changing the Constitution should be high spirited, Mr. Chairman. Holy cow. Not changing. Not adhering to it.

The CHAIRMAN. All right. The gentleman's been heard.

Mr. Pence.

**STATEMENT OF THE HON. GREG PENCE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF INDIANA**

Mr. PENCE. Chairman McGovern and Ranking Member Cole, thank you for allowing me to testify on the House Democrats' proposal to authorize remote voting by proxy and remote committee proceedings.

Mr. Chairman, throughout our Nation's history, the House of Representatives has cast their votes here under all circumstances. Tomorrow, we will consider legislation that represents one of the largest power grabs by a select few, or one, in the history of Congress. This legislation was written without the participation from more than half of the country's representatives. I know that the coronavirus pandemic continues to pose a real threat to our health, but these concerns do not supersede the responsibility we have and I have to my constituents.

I believe it is very wrong to pass my vote to someone who has never stepped foot in my district. This voting card does not belong to me. It is not mine to proxy to my peers. This voting card belongs to the Sixth Congressional District of Indiana.

Today I am here to uphold the oath I took when I said, and I quote: I will well and faithfully represent the Hoosiers that sent me to Washington, D.C., to cast my vote on their behalf. I am here to stand with the healthcare providers, truckers, farmers, and essential workers, the marines, sailors, soldiers, airmen, Coasties, and all the other heroes who are still showing up every single day on behalf of their communities and this country.

Mr. Chairman, I respect that some of my peers are concerned about their own health and personal safety, but that does not absolve Congress' responsibility or mine.

The definition of Congress is, and I quote: A national legislative body, especially that of the United States, which meets at the Capital in Washington, D.C. The Trump administration is working here, the Senate is working here. The United States House of Representatives should lead by example and come to work here too.

Thank you. I yield back.

The CHAIRMAN. Thank you.

Everybody testified?

Thank you very much. I appreciate you being here.

Let me just make a couple of remarks. I don't want to go on too long here. Sometimes I get the impression that we just talk past each other in this chamber, and I am listening to some of the testimony that I don't think reflects some of the concerns that were raised, at least accurately, during this hearing.

But let me begin by reminding everybody here that over a month ago, I actually sent a Dear Colleague letter to everybody here, Democrats, Republicans, asking for input on how we might deal with this. A handful of people responded. I don't recall anybody here sending me or the Rules Committee guidance or advice, be that as it may, but the idea that somehow that nobody wanted to hear what anybody else had to say is just not right.

We heard—by the way, we have heard not just from Democrats, but I got calls from a lot of Republicans. In fact, some of your colleagues on the Republican side expressed frustration with the fact that we didn't do something the last time we were here. And I asked whether they would have voted with us, they said probably not, but nonetheless, they wanted us to do something because that was the right thing to do.

And let me just state for the record, this is not about courage or about protecting Members of Congress. I am reminded of that great philosopher Billy Joel who said only the good die young. I am not worried about Members of Congress. What I am worried about are staff, I am worried about the Capitol Police, I am worried about the people who maintain this campus. This is a serious, serious, serious pandemic.

I heard reference to the pandemic of 1918, how Congress continued to function. It really didn't. In fact, it was so dysfunctional that a bill to provide additional doctors to rural areas couldn't get passed because people couldn't get here. I mean, that is an example of failure that I don't want to see repeated now.

Yeah, I understand all the constitutional questions. Believe me, we have been talking to constitutional scholars and maybe you have as well, and clearly, we do not want to do anything—I think there is a bipartisan concern—that would, in fact, violate the Constitution. But I will remind you, and I have never heard anybody object to this, that when my friends were in charge and they changed the rules post-9/11, you came up with the scheme that would allow literally two people to constitute a quorum here in the House of Representatives.

I think the Constitution is very clear about what a quorum is. And the idea that you could basically say that two people can just run everything, you know—I don't know. I voted against that when that came up, but that was something that my friends did when they were in charge. I am not sure—I don't know whether any of you were here at the time, but that was the response. I mean, I think that—that, to me, there were constitutional questions.

But having said that, I didn't say that the Republican party tried to destroy the Constitution. I think that was borne out of a legitimate concern about how we would function in the face of a catastrophe, a major terrorist attack. I think it was the wrong approach. I voted against it, but I didn't question the motives of what people were doing.

I agree with Mr. Byrne. I don't like the idea that we are passing major pieces of legislation without committee hearings or markups. That is one of the things this is trying to address. You know, I will remind you that we are here because already it is May and 85,000 people are dead of this virus. I hope the President is right that this is going to go away forever soon. I hope he is right, and then we will never have to even do any of this stuff. But if he is wrong, and we are already close to 100,000, and we will probably get to 100,000 before the end of June, and we are being told that things might be much worse in the fall, I want to be prepared. I want to make sure we function. I mean, I want to make sure that we can do hearings and that it is safe for people to come here. Not just Members of Congress. We all could be carriers and be asymptomatic and, you know, by interacting with the people on our staffs or here, we could be inadvertently spreading this disease.

I don't want to question anybody's motivations here, but I am just simply saying that I think the status quo is unacceptable. I want there to be hearings. I want there to be deliberation. I want there to be oversight. I want to make sure that the money that all of us in a bipartisan way, at least most of us, in a bipartisan way passed, that is getting to the people that need it. That is an important—that is an important obligation that we have. And I want to make sure that we also, in addition to responding to this emergency, that we are doing our appropriations work; that we are keeping the government running; that we are passing a defense authorization bill.

And under the proposal we are putting forward, if you want to come here, you can come here. But let me just say just from a practical, logistical point of view: We are the Rules Committee. We are one of the smallest committees in the Congress and here we are taking up the entire Ways and Means committee room, which is the biggest committee hearing room in the House of Representatives.

Now, some of us could maybe meet in the auditorium, I guess, if you are the Transportation Committee. Maybe some could meet on the House floor. By the way, we are not just three committees. I mean, we have lots of committees that all feel that they are doing important work and they are doing important work. The Veterans committee, the Resources committee, you know, all the Appropriations subcommittees. I can go right down the list of all the committees that we have here.

So we have a job to do. And, look, you know, we had a bipartisan task force to try to look at some of this stuff. We agree on some stuff. Some stuff we didn't agree on. You know, sometimes that happens, you can't get to an agreement. And we will have this debate and we will move forward. But I just really—I resent the implication that somehow our motivations are suspect here when, in fact, what we are trying to do is respond to the bipartisan calls and concerns that have been expressed by members of this House.

I can drive here from Massachusetts. That is what I have been doing, and I will come here, for committee meetings. I will try to follow all the rules and regulations, but, you know, in this case, one glove doesn't fit all. And so I don't think this is a test of one's courage or I want to show that, you know, I am willing to show up no

matter what. This is also about common sense and about protecting the people that we come in contact every single day, not just us, but everybody around us.

So I appreciate you being here. You know, we will have a vigorous debate.

Mr. Byrne.

Mr. BYRNE. Just one last thing. I believe that the rule change in 2005 is also unconstitutional.

The CHAIRMAN. I appreciate that.

Mr. BYRNE. I didn't want to seem inconsistent on that. I do think it is unconstitutional.

The CHAIRMAN. And we need to look at it. I appreciate it.

Mr. Cole.

Mr. COLE. Thank you very much, Mr. Chairman. And thank all of our witnesses. I just actually have one question that I would just ask to all of them, if I may.

And I recognize constitutional scholars disagree on this. I recognize all of you aren't lawyers, so—but you are members of this body, and so I just want to know, in your opinion, personally, if you have one, is it constitutional to allow Members of Congress to vote on matters before the full House without them being physically present in the chamber?

And I will start, if I may, with you, General, and then just move across.

Mr. BERGMAN. No.

Mr. BISHOP. No, by virtue of the definition of the word "present."

Mr. BYRNE. No, sir.

Mr. JORDAN. No.

Mr. PENCE. No, but it is very much against what my constituents have told me where they want me to be.

Mr. COLE. Thank you. That was an incredibly brief set of answers, and I thank all of you for that. But I asked the question, Mr. Chairman, just to make the point. I think every member in this particular panel feels strongly about this constitutionally. I don't think they are here to question anybody's motives or courage or anything. I don't believe that for a minute, and I don't believe that of people that hold the other point of view either.

I just think, you know, if you take an oath and this is the way you understand your oath to apply in this circumstance, that is an important thing for the record to show. But the members are all here in this particular panel because they think, literally, the rule we are about to pass, assuming we do and we probably will tomorrow, is unconstitutional; that the rule, just as my friend Mr. Byrne said, maybe what we did in 2004 or 2005, whatever that too. So you can't get mad at members when they are expressing their opinion about their constitutional obligation under an oath that they all swore to.

So with that, I yield back.

The CHAIRMAN. Thank you.

Ms. Torres.

Mrs. TORRES. I am going to pass.

The CHAIRMAN. Mr. Woodall.

Mr. WOODALL. Thank you, Mr. Chairman.

I was struck by your opening that sometimes we talk past each other, because I think you are absolutely right, your high-spirited response to our witnesses was that Congress has a job to do and we have got to get back to it and folks just need to get on board and we need to get it done. When I was listening to the testimony, I didn't hear anybody say Congress should abdicate their responsibility. I thought I heard everybody say Congress needs to get back about their business. And I say that because I was so disappointed that the bipartisan group couldn't reach a bipartisan consensus.

The chairman says he resents the implication something nefarious is going on here. I resent the implication that we don't love this institution enough collectively to find a bipartisan solution to getting about our work. I know that we can.

But, General, if I could start with you, as Mr. Cole did, and go across. Chairman says we have got to get this place back to work. That is what I thought I understood you to say. Did I understand you correctly?

Mr. BERGMAN. That is correct. We have got to get back to work. That is what the American people expect us to do, and we can do it safely. I mean, I have already done the—I loved geometry when I was in high school. I have done the geometry of all of these rooms, based on committee size, how we can do it, and make the American people proud of us. They sent us here to debate, to go at an issue from all sides, and we can do it, and we need to be the example of how to, if you will—if you want to talk about the bigger reopening of the economy, let's talk about reopening of the House of Representatives in its functional, daily business.

Mr. WOODALL. Mr. Bishop, you have spoken out against the underlying rules change, but for or against to getting the House back to work?

Mr. BISHOP. So much for it, Mr. Woodall, that I am coming every week. I am spending my weeks here because we must and we can return to our duty here.

Mr. WOODALL. Mr. Byrne, you are visiting with folks who are getting back to work every day. Chairman's right, we need to get the House of Representatives back to work. You have spoken out against the underlying rules change.

Mr. BYRNE. The United States House of Representatives, every single one of us is essential to the functioning of this Nation. Every other essential worker in America is at work. Every member of the House of Representatives that can be here, and there are some of us that can't be here, need to come here and do our job as we have done it for over 230 years.

Mr. WOODALL. Mr. Jordan, this is twice you have come to testify before this committee as this committee has been trying to get back to work. Again, the chairman's right, the Congress has to get back to work. We have to find a pathway forward, but you have spoken out against this rule change.

Mr. JORDAN. Yeah. I mean, you heard my comments earlier, Congressman. The chairman mentioned this is a small committee and we are taking up a good portion of this large hearing room, but there are other facilities. And he mentioned there is lots of committees, this is a smaller committee, but practical concerns and sched-

uling concerns shouldn't dictate a deviation from what the Constitution requires.

Let's schedule this room around the clock for committees that can meet here. Let's schedule the auditorium in the HVC around the clock for committees that can meet there and maintain the appropriate distance. That is just a scheduling practical concern, but instead, we are saying no, no, no. Members can give their vote to some other member, and conceivably under this legislation, 22 members could conduct the business of the American people. That is certainly not what was envisioned in any way by the Constitution.

So let's not make a scheduling and practical concern—very real. The chairman's right, very real—but let's not make that the reason we are going to change the Constitution and not follow the Constitution. Let's get back to work and let's do it in the right way, just like this committee is doing as we speak.

Mr. WOODALL. Mr. Pence, you traveled back to Washington for this committee hearing today. Again, we do have to get Congress back to work, but you have spoken out against this rules change.

Mr. PENCE. Yes, sir. I actually came Sunday as I felt so strongly about being out here. As I mentioned earlier, my constituents kept asking me, when is Congress going to get back to work? In their mind, back to work is right out here.

Mr. WOODALL. Mr. Chairman, I don't go through that exercise for effect. I think you genuinely are looking for bipartisan cooperation to get Congress back to work. And I believe you and Mr. Cole share a disappointment that the bipartisan committee couldn't find that, but I can tell you this is a perfect cross-section of the Republican Conference and every single one of them is concerned about the underlying resolution, but absolutely shares the passion to get back to work.

I know that if we commit more time to it as we talked about—this is a September problem—worried about what happens in round two, that we can find that bipartisan cross-section. We don't have to do this in a way that divides us. We can do this in a way that brings this institution together, as I know you want to do.

And with that, I yield back.

The CHAIRMAN. Well, thank you very much.

I can't speak for all of you, but I have been working very hard during this time, talking to committee chairs, weighing in on my priorities on some of the bills, dealing with my constituents. So, I mean, some of us have been working. And I would also say that, I guess where we disagree is that you said you think the only way we can do our job is by all being here in one spot; whereas, some of us believe we can operate remotely in some cases or in a hybrid fashion.

But here is the good news. For everybody who wants to come back, I mean, what we are doing here today basically allows for that. And if that is where you feel most comfortable, in a committee room, you are more than welcome to do that. So nothing in any way, shape, or form would undercut that.

Mr. Perlmutter.

Mr. PERLMUTTER. Thanks, Mr. Chair.

Mr. Jordan, you and I didn't agree last time you were here. We don't agree today, so I will just——

Mr. JORDAN. Imagine that.

Mr. PERLMUTTER. That is really surprising for the two of us.

But I do, General, I kind of like math too, so I did some math.

Mr. Bishop, I am looking at a Hong Kong flu. Hong Kong flu, 100,000 died over 3 years. We have 84,000 in 2 months. So if I do the math, the math is 18 times 84,000 puts us at a 1,512,000, if it continues for 3 years. So they are not the same thing. This is more like the—this is more like the Spanish flu, which ultimately resulted in us coming up with the UC, unanimous consent, where two people have to agree and you pass legislation.

The thing that the Hong Kong flu may be like this is that it was the second wave that was worse than the first, and we have to watch out for that. At that time, it was considered to be an epidemic, and I am looking at the side bar of where there were 650 deaths a week in America. Today, it is 2,000 a day. So the math is much different.

Mr. Byrne, I did some math for you, and it was brought to my attention because of Mr. Pence. He is here to represent the 750,000 or so folks from his district. I assume you represent about that many too. I think in my district, we are up to about 850,000. But just doing the math, you said last vote, 35 were not present. 35 times 750,000, I think is about 26,250,000. That is how many people they represented, that is how many people were disenfranchised by their not being here because they were not present.

We have at least two members of this committee, one of whom you served with, Mr. Hastings, who has been told in no uncertain terms he cannot travel because of his condition, but he certainly is capable of making decisions and representing the 750,000 people. And I wish he were here, because his voice is so strong and powerful. And I want him to be able to participate and provide his experience and his logic, whether it is virtually or by casting a vote by proxy.

And we have two pieces to this particular rule. You all have been talking more about the floor vote and the proxy vote, but we also have the ability of committees, although maybe imperfect, to continue to meet and allow for individuals to make decisions and make votes on behalf of Americans. And that is the bottom line here is the continuity of government.

And I appreciate everybody's legal opinion that this is unconstitutional, which I absolutely dispute every way to Sunday. This is about representing people. We have asked most of America to work remotely to avoid precisely what happened with the Hong Kong flu and the Spanish flu and have another big outbreak. We have asked that because this administration was caught flat-footed when this virus came on our shores and we didn't have enough protective gear, we didn't have enough ventilators, we didn't have enough beds. And thank goodness Americans, those who provide essential services, and God bless them—I assume every one of you is going to vote for the bill tomorrow because it has hazard pay for those people. But thank goodness Americans said, you know what, we are going to take the advice of the CDC and people to suppress this

surge so that our healthcare system isn't overwhelmed and so that there, you know, God forbid, are other outbreaks, there will be sufficient protective gear and beds and ventilators and of the like.

Now, Mr. Pence, and I appreciate—you know, I served with your brother, outstanding legislator. Tell me, is he in quarantine now? Is he self-isolated?

Mr. PENCE. I don't speak on behalf of my brother. I am here as the Indiana Sixth—

Mr. PERLMUTTER. I know. I mean, I am just asking.

Mr. PENCE [continuing]. District representative.

Mr. PERLMUTTER. All right. Let's not talk about him. Let's talk about the 39 members of the House, most of whom went into quarantine in that first week after we broke on March 14. Those 39 members have had to go into—had to go into quarantine, some of them very ill. There were nine Senators. Lamar Alexander is still in quarantine. And we have had—and I didn't realize this. I forgot my friend, Mr. Cole, was in quarantine for some time. And I disagree with him sometimes, I agree with him sometimes, but I always appreciate his perspective.

And so we are in a pandemic that is much worse than Hong Kong flu. Based on the numbers it is. Three years, 100,000, and I think I just read the same story you did out of The Wall Street Journal, and I did the math. I extrapolated it from 2-½ months to 3 years, which is what they were saying.

Mr. BISHOP. Would the gentleman yield?

Mr. PERLMUTTER. Let me finish with Mr. Pence and I will yield to the gentleman.

But the purpose and the concern I have is whether I would agree with a Greg Pence or a Jim Jordan or Bradley Byrne. I respect their opinions and I want those people to be able to represent the 750,000 folks back in their districts. And in an imperfect and, in fact, an improbable time like we are in right now, we must be able to exercise certain inherent powers to deal with unforeseen circumstances which could threaten the continuity of its operations and the safety of the Nation.

We are asking a lot of people to work remotely. We are asking a lot of essential workers to be present themselves. The rule that has been fashioned is very narrow. It expires at the end of this year. It is limited to 45-day increments, based on the Speaker, in consultation with the minority leader, the House physician, and the sergeant at arms.

And I think it is something that enfranchises the Alcee Hastings, the Tom Cole's when he is in quarantine. And the notion that this is fundamentally changing the operations of the House or the notion that this is unconstitutional is just wrong.

So I would yield to Mr. Bishop for him to criticize my math.

Mr. BISHOP. It isn't the point of your math. In other words, it is not a question—the pandemic doesn't become serious once it crosses a magic line, although I made the point that the number of deaths if extrapolated from that pandemic in the United States would be 250,000, a measure we have not reached. The point is, and it was made well I think by Mr. Byrne's comments, that we have faced—this is not an unprecedented danger. And it is not the Spanish flu of 1918 in which 50 million died worldwide in a much

smaller world population. This is a serious, serious risk, but it is not defining, and our response to it need not act as if it is.

Mr. PERLMUTTER. And I would just say to the gentleman—Mr. Morelle, you want me to yield to you?

Mr. MORELLE. No.

Mr. PERLMUTTER. Okay. I would say to the gentleman that the rule that is before us is very proportional in terms of it would allow you, if you so chose, to come here every week, do your thing, sit in that chair, but it also would allow Alcee Hastings to offer his perspective and his knowledge on behalf of the people he represents.

And for all of you to suggest that some shouldn't be given that opportunity in this pandemic, which is very serious, you admit that, I think is just fundamentally flawed and ultimately leaves a lot of people without representation, which is the whole point of our government.

And with that, I yield back to the chair.

The CHAIRMAN. Dr. Burgess, you have questions?

Dr. BURGESS. Thank you. Thanks to our witnesses for being here today.

Mr. Pence, let me just add my praise to what you just heard. Your brother, during his time of service here, was probably the best conference chairman that I have served with, and we honor his service here and we miss him, but we are glad he is where he is today, so please convey that.

The CHAIRMAN. We like this Mr. Pence too.

Dr. BURGESS. Yes, we do.

May I—and I really don't know whom to address this, probably either Mr. Jordan or Mr. Byrne. As I read the rule that we are considering today, yes, there is a time limit on the denotation that this is an emergency and all of this is triggered, but there is an extension available, and that extension is arrived at by the Speaker, in consultation with the sergeant at arms, attending physician, two individuals that I hold in very high regard, but they are not constitutional offices, so we are putting some power in the hands of some people that are really not accountable to the people, and this being the people's House, that seems to me to be counter to what we should be about.

Do either of you have a thought on that?

Mr. BYRNE. Well, I think you said it correctly. The rules who are operating this House right now will all go out January 3 at noon when the new Congress comes in, but between now and then there could be this perpetual running 45-day extension of this, all the way up until the very end. And there is no check on that. I mean, it is up to the Speaker.

And one person—and I know the Speaker is an important position in the House, but one person can get this thing to just roll over and over and over till the end of the Congress, and I do think that is unconstitutional. But more importantly, I think it does great damage to the institution of the House.

Dr. BURGESS. I agree.

Mr. JORDAN. I agree with my colleague, and appreciate the gentleman for raising the point. I am very nervous about people whose names never go on a ballot making all kinds of policy. We are see-

ing it all across the country. Health commissioners in States dictating policy and the general assembly of those respective States doesn't get to weigh in. And now the U.S. Congress is going to follow a similar pattern? That is scary stuff.

And I am like you. I have the utmost respect for these people, but their name is not on a ballot. They are not constitutionally elected. Again, when you start playing these kind of games—the previous gentleman mentioned all kinds of math, all kinds of math extrapolation he did, but the math in the bill he didn't talk about. The math in the bill is real simple. A member can have 10 proxies in their pocket, which means, as I have said now three times, 22 people on the House floor can make policy for the country. And, oh, then it gets reapproved, we want to continue to do this for three people that you talked about, two of them who aren't elected. How is that government by the people, for the people, and we the people being served?

This is so scary where we are heading. So darn scary. And I appreciate the fact that some members can't be here today who we wish were. I appreciate that. But the Constitution is the foundational document that we got to follow.

So you are so right, Dr. Burgess, and I appreciate you for raising that point.

Dr. BURGESS. Thank you.

And let me just say I appreciate the fact that we are having this hearing today. I think it is important that we be seen as being on the job. It has been extremely uncomfortable all of these weeks, many weeks that we have remained home and out of our place of service, which is here in the Capital of the United States. I just cannot shake the notion that the people's House was never meant to be this passive and, unfortunately, that seems to be what has devolved, where we are having a bill tomorrow on the floor that none of us had anything to do with and we are just supposed to accept it and rubber-stamp it. That is not why we were elected. That is not why we ran for office. It can't be why we ran for office.

Yes, sir.

Mr. JORDAN. Not only was the House not supposed to be this passive; it was supposed to be the most active. When the Founders put this experiment together we call America, it was supposed to be the most engaged, the most active. Again, this is scary that this unelected—we have seen this the last couple weeks with information that has come public about certain investigations and things being done, done by people whose names were not on a ballot. That is scary stuff.

Again, I appreciate the gentleman.

Dr. BURGESS. I thank the gentleman.

I will yield back.

The CHAIRMAN. Thank you. And, again, that is why I think we should pass this bill, because we can then, you know, remove any excuse why we can't be meeting on a regular basis no matter where anybody might be from.

And let me just say that the alternative to this is to rely on the Republican standing rule, which is to where you could literally redefine a quorum as two people. And, again, I mean, that is—my friends here, many of them supported it. I did not at the time, but

that is what the standing rule is right now that my friends passed post-9/11, and I think that is unacceptable.

What we are proposing here is a way for people to come—you feel comfortable coming back, if you can come back, if you don't represent a hot spot, then you can come back. And by the way, this idea that we should de-emphasize the importance of medical advice, that somehow they are unelected officials and, therefore, they are not as important as the elected official, I mean, I am going to be honest with you, I want to make decisions on how we combat this virus based on the best medical advice that exists. I want to have it be made by people who know what they are talking about, not by politicians who have no—many of them who have no medical degrees. We have heard some of the suggestions that have been put forward by the President that, you know, leave your head spinning but, quite frankly, the advice that he should follow, the advice that all of us should follow is by the experts. Those who know what they are talking about when it comes to how you deal with a virus like this.

Mr. Raskin.

Mr. RASKIN. Thank you very much, Mr. Chairman. Thank you for your really dedicated and impressive leadership through this tough time. And I also want to salute Mr. Cole. I got to tell you, Mr. Cole, I spoke to a class at Grinnell College. And you have got a lot of fans there. I don't know if you are a graduate of Grinnell, but they wanted me to send their very best to you and said that they are proud of you, so—

Mr. Cole posed an interesting question to the panel about whether all of you concurred that you think that the proposed rule here is unconstitutional, and each one of you in seriatim repeated the idea that you thought it was unconstitutional.

Now, Mr. Byrne has candidly volunteered that the current rule adopted by a Republican Congress is unconstitutional which would allow two members to constitute a quorum. I just want to know, do all five of you also agree that the current rule is unconstitutional? And perhaps I could start with you, Mr. Pence.

Mr. PENCE. I am afraid I don't know enough about that to answer.

Mr. RASKIN. Oh, well, you were expressing your outrage about this proposal, but the current rule would allow two people to constitute.

Mr. PENCE. My answer—I want to be clear about a couple of things. One is, and I agree with the chairman, you know, it is health and safety first, and for any members that feel that they shouldn't come here or can't come here, I completely understand and I support. I am an individual that volunteered to join the Marine Corps, volunteered to go ashore in a hot situation, and I volunteered to run for this position, okay, and my constituents have told me that I should be here. That is my answer to you.

Mr. RASKIN. Okay. I will come back to you about volunteering, because you make a very interesting point.

Mr. Jordan, what about you, do you agree the current rule is unconstitutional?

Mr. JORDAN. As the gentleman well knows, my colleagues in the Freedom Caucus have come to the floor and objected to unanimous consent to pass certain legislation.

Mr. RASKIN. Do you agree with Mr. Byrne?

Mr. JORDAN. So we have always had a problem with that.

Mr. RASKIN. So you agree, yes or no question, do you agree with Mr. Byrne it is unconstitutional?

Mr. JORDAN. Yeah, I don't like the rule. We have been very clear about that.

Mr. RASKIN. You agree it is unconstitutional. Okay. Is that right? Okay.

Mr. Byrne, you presumably still agree that it is unconstitutional?

Mr. BYRNE. Yes, sir. If you are going to be consistent, you have to follow what the Constitution requires, and what is good for the goose is good for the gander. I try to be consistent.

Mr. RASKIN. Mr. Bishop, do you believe the current rule is unconstitutional, adopted under a Republican Congress?

Mr. BISHOP. I haven't examined it carefully, but I find Mr. Byrne's comments and those that have been made by the chairman on the point persuasive. It probably is unconstitutional.

Mr. RASKIN. Okay. And do you agree as well?

Mr. BERGMAN. I would like to make in reference—the short answer is there is the yes but understanding that commanders command, leaders lead, advisers advise, and on the advice of my attorney off here to my right, you know, I take his advice because that is his job. My job as a commander, as a leader is that you get the results that you were missioned to give.

Mr. RASKIN. Okay. I yield back, Mr. Chairman. Thank you.

The CHAIRMAN. Okay. Mrs. Lesko.

Mrs. LESKO. Thank you, Mr. Chairman.

I want to thank all of you. I think you did a great job of explaining your stance. I agree with you totally. And not to belabor this, I am just going to yield back. Thank you.

The CHAIRMAN. Mr. Morelle.

Mr. MORELLE. Thank you, Mr. Chairman. Just briefly. And I thank the gentlemen for their testimony.

Mr. Perlmutter took us through a math lesson. At the risk of boring people with a math lesson, it occurs to me that the testimony by each of the members suggests that we live in a binary state here. It is either on or off—binary being two choices—on or off, yes or no, black or white, work or not work. And I think the beauty of this resolution and the wonder of technology has given us an opportunity to continue to work even as we respect the guidance of the House physician, the guidance of science and technology, guidance of other individuals. In prior pandemics, in prior crisis, perhaps those were binary choices, work or not work, come to Washington, not come to Washington.

Frankly, I would just say parenthetically, I have worked harder in the last 2 months probably sitting in my home office than I may have in the previous year. This has been—and I assume this is true of everybody not only on the panel, but members of our committee, that we are all working incredibly hard to represent constituents in communities that are under significant stress. So we are no longer in this binary box where it is work or not work.

I appreciate Mr. Byrne's view on the Constitution and, frankly, if we could get to a point where the question of constitutionality needs to be heard, that would go in front of the courts and they would make that judgment. But I think it is pretty clear Article I suggests that the Congress is the master of its houses when it comes to the rules.

I do want to just point out, I hate to disagree with you, Mr. Jordan, but you make it sound as though, under the proposed rule, that a member could gather up proxies like you might do in a committee fight back in your local town and cast them however you choose to do. The rules are very explicit on how the votes will be cast. This is not by the person who holds the proxy; it is the person who gives the proxy. They have to give exact instructions on every single motion or vote in front of them.

So, you know, I appreciate what you are suggesting. I just don't think it is borne out by—

Mr. JORDAN. Will the gentleman yield?

Mr. MORELLE. I will.

Mr. JORDAN. So then there is a motion made on the floor, what happens?

Mr. MORELLE. During the motion—

Mr. JORDAN. Do they get to vote for the 10 proxies in their pocket?

Mr. MORELLE. No, they do not. They do not. And the testimony—

Mr. JORDAN. Which is my point. Twenty-two members then could be making law. They could decide.

Mr. MORELLE. No, no. No. Well, let me—

The CHAIRMAN. Read the resolution.

Mr. MORELLE. Let me answer, if I might. In the rule, and the majority leader testified to this as well, that if a motion comes forward, each member who has a designated proxy must communicate to that proxy holder what his or her view is on the motion in front of the House. So it is not the holder of the proxy who uses independent judgment; it is the person who is given the proxy who gives explicit instructions, and it is repeated in a number of different instances in the proposed rule.

So it is not the 22 people holding the proxies. And I appreciate what you are saying about the fact that you can hold up to 10. But they may not exercise independent judgment. We had this conversation earlier. It would be a violation of the rule and a member would be subject to sanctions by the House should they vote in a way that was not consistent with the instructions they had been given.

So I just make that point only to suggest that this is not an attempt to concentrate power. It is an attempt to continue to conduct business under the most difficult circumstances we have faced in our lifetime. And I would also suggest that the question of whether the Speaker would choose—this is the Speaker may, upon the designation by the sergeant at arms, in consultation with the House physician, during this pandemic only, during a coronavirus, novel coronavirus, in this Congress only, may designate for 45 days. I will note, though, 45 days is the amount indicated. But it also suggests, on page 3, that even during any—whether it is the original

45-day or an additional 45 days is the covered period, the Speaker or the designee receives further notification from the sergeant at arms, in consultation with the attending physician, that the public health emergency due to the coronavirus is no longer in effect, the Speaker shall terminate the covered period.

It is not as though the Speaker—it doesn't say may, it says shall. So immediately upon—so if the Speaker, as I read the rule, if the Speaker says on May 1 we have a pandemic, I have been advised by the sergeant at arms, in consultation with the attending physician, to put this temporary rule in place, and then 2 weeks later, before the 45 days has terminated, if you receive—if the Speaker receives another certification or notification from the sergeant at arms that the emergency no longer exists, it is terminated, shall terminate, so it wouldn't even be 45 days in length.

But the point I want to make, and I appreciate the concern people have, but this is not—I fear at times this is being somehow equated with weakness or strength, that our desire to meet through technological means or our desire to conduct business by proxy is a sign somehow of weakness. And I would just, you know, suggest that the Vice President of the United States and the President right now don't meet personally. It has been—I am not making that up. I don't have inside information, I just read the newspaper. The Vice President has said he will not meet with the President for a period of time. I don't know if that is 14 days. I don't know what it will be. But I suggest to you that I suspect they are talking on the telephone and they are communicating on an ongoing basis and they are conducting business. And I don't think—I would never say and I don't believe that the Vice President is weak. I don't think the President is weak. I don't think they are fearful. I think they are just, you know, exhibiting the appropriate distancing that healthcare professionals have suggested.

So I appreciate what people have said. I have expressed my concerns about precedent, but I think the narrow nature of this resolution and the arguments that have been made I don't think are compelling.

Mr. BYRNE. Will the gentleman yield?

Mr. MORELLE. Yes, sir.

Mr. BYRNE. Thank you. The function of the executive and the function of the legislative branch of government are fundamentally different.

Mr. MORELLE. Yeah. No, I wasn't suggesting it is the same. All I am saying is the suggestion—

Mr. BYRNE. We have to legislate, and under the Constitution, the intent is we legislate while we are physically present. That is why they have the command in there that less than a quorum can actually force people to come to where we meet. I also think that is good policy, because as I said earlier, I think we get better policy when we go through regular order, everybody is in the room, we hash it out, majority wins, that is the way it goes. I get that. I don't think you can equate whether the President and Vice President are physically in the same room with one another to what our job is, because our job is fundamentally different.

If I could say one other thing. You said something, and I hope you didn't misunderstand me here. I know we are working hard

back in our districts. I talked to plenty of my colleagues. We are doing everything we can to take care of our constituents, but under the Constitution, the part of our job that is legislating, we have to do here.

Mr. MORELLE. Well, I would just respond, and I wasn't—I appreciate what you are saying about our different functions and I agree with you. We do have different functions, but I feel as though, and maybe this hasn't been said directly, but I will say I get the impression that there is sort of a suggestion there is some weakness here. And I was simply suggesting that I don't think the President and Vice President are acting in a weak manner by not meeting together, and they certainly are using technology to continue to do their jobs. And I don't think the gentleman would disagree that, clearly, the Constitution intended for the Congress to make its own rules, and even the question of the quorum under emergencies has been suggested could be smaller.

So I just think—the point that I want to make is I think it is not a decision of yes, we come to work, and even under your definition, even if you take the view that work doesn't mean work but work in terms of the Congress means that we are voting, I believe that it is not we don't need to be captives or hostage to the idea that in an earlier age there was no physical way, there was no technological way for us to come together.

Mr. MORELLE. And I would suggest that only under the very narrow circumstances anticipated by this resolution could we continue to work on behalf of the American public.

But I appreciate it, and I yield back.

The CHAIRMAN. Thank you.

And I think you also raised a point. I don't think there are any constitutional issues revolving around whether or not committees can meet virtually. I mean, the Constitution doesn't create the committees; the Congress creates the committees. So, I mean, hopefully we can all agree on that.

Ms. Shalala.

Ms. SHALALA. Mr. Chairman, I just want to make a comment about the suggestion that scientists and public health people are making policy in this country. They are not. We are the policymakers. The Governors, the mayors are the policymakers.

They seek advice during a crisis, like this one with a vicious virus, from experienced scientists and public health officials, and they can take that advice or not take that advice. And all across the country, there is evidence that some people are taking the advice and some people aren't taking the advice.

But all of the scientists I know and the public health people in this country—and many of them I have worked with for years—are very careful not to be policymakers. They are particularly careful just to present the evidence and not to substitute for the policymakers.

And I think that this country, which has invested hundreds of billions of dollars over the years in building one of the great scientific enterprises, the National Institutes of Health, the CDC, the FDA—thank God we have them now.

I yield back.

The CHAIRMAN. Well, thank you very much.

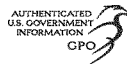
I want to thank all of you for being here. I want to thank you for your patience. It is always wonderful to see you. And you can go. Thank you.

So do any other Members wish to testify on H. Res. 965?

Seeing none, this closes the original jurisdiction hearing on H. Res. 965.

The measure before the committee is H. Res. 965. Without objection, the resolution is considered as read and will be open for amendment at any point.

[The resolution follows:]



IV

116TH CONGRESS
2D SESSION**H. RES. 965**

Authorizing remote voting by proxy in the House of Representatives and providing for official remote committee proceedings during a public health emergency due to a novel coronavirus, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2020

Mr. MCGOVERN submitted the following resolution; which was referred to the Committee on Rules

RESOLUTION

Authorizing remote voting by proxy in the House of Representatives and providing for official remote committee proceedings during a public health emergency due to a novel coronavirus, and for other purposes.

1 *Resolved,*

2 **SECTION 1. AUTHORIZATION OF REMOTE VOTING BY**
 3 **PROXY DURING PUBLIC HEALTH EMER-**
 4 **GENCY DUE TO NOVEL CORONAVIRUS.**

5 (a) AUTHORIZATION.—Notwithstanding rule III, at
 6 any time after the Speaker or the Speaker's designee is
 7 notified by the Sergeant-at-Arms, in consultation with the
 8 Attending Physician, that a public health emergency due

1 to a novel coronavirus is in effect, the Speaker or the
2 Speaker's designee, in consultation with the minority lead-
3 er or the minority leader's designee, may designate a pe-
4 riod (hereafter in this resolution referred to as a "covered
5 period") during which a Member who is designated by an-
6 other Member as a proxy in accordance with section 2 may
7 cast the vote of such other Member or record the presence
8 of such other Member in the House.

9 (b) LENGTH OF COVERED PERIOD.—

10 (1) IN GENERAL.—Except as provided in para-
11 graphs (2) and (3), a covered period shall terminate
12 45 days after the Speaker or the Speaker's designee
13 designates such period.

14 (2) EXTENSION.—If, during a covered period,
15 the Speaker or the Speaker's designee receives fur-
16 ther notification from the Sergeant-at-Arms, in con-
17 sultation with the Attending Physician, that the
18 public health emergency due to a novel coronavirus
19 remains in effect, the Speaker or the Speaker's des-
20 ignee, in consultation with the minority leader or the
21 minority leader's designee, may extend the covered
22 period for an additional 45 days.

23 (3) EARLY TERMINATION.—If, during a covered
24 period, the Speaker or the Speaker's designee re-
25 ceives further notification by the Sergeant-at-Arms,

1 in consultation with the Attending Physician, that
2 the public health emergency due to a novel coronavi-
3 rus is no longer in effect, the Speaker or the Speak-
4 er's designee shall terminate the covered period.

5 **SEC. 2. PROCESS FOR DESIGNATION OF PROXIES.**

6 (a) IN GENERAL.—

7 (1) DESIGNATION BY SIGNED LETTER.—In
8 order for a Member to designate another Member as
9 a proxy for purposes of section 1, the Member shall
10 submit to the Clerk a signed letter (which may be
11 in electronic form) specifying by name the Member
12 who is designated for such purposes.

13 (2) ALTERATION OR REVOCATION OF DESIGNA-
14 TION.—

15 (A) IN GENERAL.—At any time after sub-
16 mitting a letter to designate a proxy under
17 paragraph (1), a Member may submit to the
18 Clerk a signed letter (which may be in elec-
19 tronic form) altering or revoking the designa-
20 tion.

21 (B) AUTOMATIC REVOCATION UPON CAST-
22 ING OF VOTE OR RECORDING OF PRESENCE.—

23 If during a covered period, a Member who has
24 designated another Member as a proxy under
25 this section casts the Member's own vote or

1 records the Member's own presence in the
2 House, the Member shall be considered to have
3 revoked the designation of any proxy under this
4 subsection with respect to such covered period.

5 (3) NOTIFICATION.—Upon receipt of a letter
6 submitted by a Member pursuant to paragraphs (1)
7 or (2), the Clerk shall notify the Speaker, the major-
8 ity leader, the minority leader, and the other Mem-
9 ber or Members involved of the designation, alter-
10 ation, or revocation.

11 (4) LIMITATION.—A Member may not be des-
12 ignated as a proxy under this section for more than
13 10 Members concurrently.

14 (b) MAINTENANCE AND AVAILABILITY OF LIST OF
15 DESIGNATIONS.—The Clerk shall maintain an updated
16 list of the designations, alterations, and revocations sub-
17 mitted or in effect under subsection (a), and shall make
18 such list publicly available in electronic form and available
19 during any vote conducted pursuant to section 3.

20 **SEC. 3. PROCESS FOR VOTING DURING COVERED PERIODS.**

21 (a) RECORDED VOTES ORDERED.—

22 (1) IN GENERAL.—Notwithstanding clause 6 of
23 rule I, during a covered period, the yeas and nays
24 shall be considered as ordered on any vote on which

1 a recorded vote or the yeas and nays are requested,
2 or which is objected to under clause 6 of rule XX.

3 (2) INDICATIONS OF PROXY STATUS.—In the
4 case of a vote by electronic device, a Member who
5 casts a vote or records a presence as a designated
6 proxy for another Member under this resolution
7 shall do so by ballot card, indicating on the ballot
8 card “by proxy”.

9 (b) DETERMINATION OF QUORUM.—Any Member
10 whose vote is cast or whose presence is recorded by a des-
11 ignated proxy under this resolution shall be counted for
12 the purpose of establishing a quorum under the rules of
13 the House.

14 (c) INSTRUCTIONS FROM MEMBER AUTHORIZING
15 PROXY.—

16 (1) RECEIVING INSTRUCTIONS.—Prior to cast-
17 ing the vote or recording the presence of another
18 Member as a designated proxy under this resolution,
19 the Member shall obtain an exact instruction from
20 the other Member with respect to such vote or
21 quorum call, in accordance with the regulations re-
22 ferred to in section 6.

23 (2) ANNOUNCING INSTRUCTIONS.—Immediately
24 prior to casting the vote or recording the presence
25 of another Member as a designated proxy under this

1 resolution, the Member shall seek recognition from
2 the Chair to announce the intended vote or recorded
3 presence pursuant to the exact instruction received
4 from the other Member under paragraph (1).

5 (3) FOLLOWING INSTRUCTIONS.—A Member
6 casting the vote or recording the presence of another
7 Member as a designated proxy under this resolution
8 shall cast such vote or record such presence pursu-
9 ant to the exact instruction received from the other
10 Member under paragraph (1).

11 **SEC. 4. AUTHORIZING REMOTE PROCEEDINGS IN COMMIT-**
12 **TEES.**

13 (a) AUTHORIZATION.—During any covered period,
14 and notwithstanding any rule of the House or its commit-
15 tees—

16 (1) any committee may conduct proceedings re-
17 motely in accordance with this section, and any such
18 proceedings conducted remotely shall be considered
19 as official proceedings for all purposes in the House;

20 (2) committee members may participate re-
21 motely during in-person committee proceedings, and
22 committees shall, to the greatest extent practicable,
23 ensure the ability of members to participate re-
24 motely;

1 (3) committee members may cast a vote or
2 record their presence while participating remotely;

3 (4) committee members participating remotely
4 pursuant to this section shall be counted for the pur-
5 pose of establishing a quorum under the rules of the
6 House and the committee;

7 (5) witnesses at committee proceedings may ap-
8 pear remotely;

9 (6) committee proceedings conducted remotely
10 are deemed to satisfy the requirement of a “place”
11 for purposes of clauses 2(g)(3) and 2(m)(1) of rule
12 XI; and

13 (7) reports of committees (including those filed
14 as privileged) may be delivered to the Clerk in elec-
15 tronic form, and written and signed views under
16 clause 2(l) of rule XI may be filed in electronic form
17 with the clerk of the committee.

18 (b) LIMITATION ON BUSINESS MEETINGS.—A com-
19 mittee shall not conduct a meeting remotely or permit re-
20 mote participation at a meeting under this section until
21 a member of the committee submits for printing in the
22 Congressional Record a letter from a majority of the mem-
23 bers of the committee notifying the Speaker that the re-
24 quirements for conducting a meeting in the regulations re-
25 ferred to in subsection (h) have been met and that the

1 committee is prepared to conduct a remote meeting and
2 permit remote participation.

3 (c) REMOTE PROCEEDINGS.—Notwithstanding any
4 rule of the House or its committees, during proceedings
5 conducted remotely pursuant to this section—

6 (1) remote participation shall not be considered
7 absence for purposes of clause 5(c) of rule X or
8 clause 2(d) of rule XI;

9 (2) the chair may declare a recess subject to
10 the call of the chair at any time to address technical
11 difficulties with respect to such proceedings;

12 (3) copies of motions, amendments, measures,
13 or other documents submitted to the committee in
14 electronic form as prescribed by the regulations re-
15 ferred to in subsection (h) shall satisfy any require-
16 ment for the submission of printed or written docu-
17 ments under the rules of the House or its commit-
18 tees;

19 (4) the requirement that results of recorded
20 votes be made available by the committee in its of-
21 fices pursuant to clause 2(e)(1)(B)(i) of rule XI
22 shall not apply;

23 (5) a committee may manage the consideration
24 of amendments pursuant to the regulations referred
25 to in subsection (h);

1 (6) counsel shall be permitted to accompany
2 witnesses at a remote proceeding in accordance with
3 the regulations referred to in subsection (h); and

4 (7) an oath may be administered to a witness
5 remotely for purposes of clause 2(m)(2) of rule XI.

6 (d) REMOTE PARTICIPANTS DURING IN-PERSON
7 PROCEEDINGS.—All relevant provisions of this section and
8 the regulations referred to in subsection (h) shall apply
9 to committee members participating remotely during in-
10 person committee proceedings held during any covered pe-
11 riod.

12 (e) TRANSPARENCY FOR MEETINGS AND HEAR-
13 INGS.—Any committee meeting or hearing that is con-
14 ducted remotely in accordance with the regulations re-
15 ferred to in subsection (h)—

16 (1) shall be considered open to the public;

17 (2) shall be deemed to have satisfied the re-
18 quirement for non-participatory attendance under
19 clause 2(g)(2)(C) of rule XI; and

20 (3) shall be deemed to satisfy all requirements
21 for broadcasting and audio and visual coverage
22 under rule V, clause 4 of rule XI, and accompanying
23 committee rules.

24 (f) SUBPOENAS.—

1 (1) AUTHORITY.—Any committee or chair
2 thereof empowered to authorize and issue subpoenas
3 may authorize and issue subpoenas for return at a
4 hearing or deposition to be conducted remotely
5 under this section.

6 (2) USE OF ELECTRONIC SIGNATURE AND
7 SEAL.—During any covered period, authorized and
8 issued subpoenas may be signed in electronic form;
9 and the Clerk may attest and affix the seal of the
10 House to such subpoenas in electronic form.

11 (g) EXECUTIVE SESSIONS.—

12 (1) PROHIBITION.—A committee may not con-
13 duct closed or executive session proceedings re-
14 motely, and members may not participate remotely
15 in closed or executive session proceedings.

16 (2) MOTION TO CLOSE PROCEEDINGS.—Upon
17 adoption of a motion to close proceedings or to move
18 into executive session with respect to a proceeding
19 conducted remotely under this section, the chair
20 shall declare the committee in recess subject to the
21 call of the chair with respect to such matter until it
22 can reconvene in person.

23 (3) EXCEPTION.—Paragraphs (1) and (2) do
24 not apply to proceedings of the Committee on Eth-
25 ics.

1 (h) REGULATIONS.—This section shall be carried out
2 in accordance with regulations submitted for printing in
3 the Congressional Record by the chair of the Committee
4 on Rules.

5 (i) APPLICATION TO SUBCOMMITTEES AND SELECT
6 COMMITTEES.—For purposes of this section, the term
7 “committee” or “committees” also includes a sub-
8 committee and a select committee.

9 **SEC. 5. STUDY AND CERTIFICATION OF FEASIBILITY OF RE-**
10 **MOTE VOTING IN HOUSE.**

11 (a) STUDY AND CERTIFICATION.—The chair of the
12 Committee on House Administration, in consultation with
13 the ranking minority member, shall study the feasibility
14 of using technology to conduct remote voting in the House,
15 and shall provide certification to the House upon a deter-
16 mination that operable and secure technology exists to
17 conduct remote voting in the House.

18 (b) REGULATIONS.—

19 (1) INITIAL REGULATIONS.—On any legislative
20 day that follows the date on which the chair of the
21 Committee on House Administration provides the
22 certification described in subsection (a), the chair of
23 the Committee on Rules, in consultation with the
24 ranking minority member, shall submit regulations
25 for printing in the Congressional Record that pro-

1 vide for the implementation of remote voting in the
2 House.

3 (2) SUPPLEMENTAL REGULATIONS.—At any
4 time after submitting the initial regulations under
5 paragraph (1), the chair of the Committee on Rules,
6 in consultation with the ranking minority member,
7 may submit regulations to supplement the initial
8 regulations submitted under such paragraph for
9 printing in the Congressional Record.

10 (c) IMPLEMENTATION.—Notwithstanding any rule of
11 the House, upon notification of the House by the Speaker
12 after the submission of regulations by the chair of the
13 Committee on Rules under subsection (b)—

14 (1) Members may cast their votes or record
15 their presence in the House remotely during a cov-
16 ered period;

17 (2) any Member whose vote is cast or whose
18 presence is recorded remotely under this section
19 shall be counted for the purpose of establishing a
20 quorum under the rules of the House; and

21 (3) the casting of votes and the recording of
22 presence remotely under this section shall be subject
23 to the applicable regulations submitted by the chair
24 of the Committee on Rules under subsection (b).

1 **SEC. 6. REGULATIONS.**

2 To the greatest extent practicable, sections 1, 2, and
3 3 of this resolution shall be carried out in accordance with
4 regulations submitted for printing in the Congressional
5 Record by the chair of the Committee on Rules.

○

The CHAIRMAN. Are there any amendments to this resolution?

The gentleman from Georgia, Mr. Woodall, is recognized for his amendment.

Mr. WOODALL. I very much appreciate that, Mr. Chairman. I have an amendment at the desk.

The CHAIRMAN. If the clerk will report the amendment.

The CLERK. Amendment No. 1 to H. Res. 965, offered by Mr. Woodall of Georgia.

[The amendment of Mr. Woodall follows:]

AMENDMENT TO H. RES. _____
OFFERED BY M. _____. _____

Add at the end of section 1 the following new sub-
 section:

1 (c) CERTIFICATION BY CLERK OF SECURE SYSTEM
 2 FOR RECEIPT AND VALIDATION OF PROXY DESIGNA-
 3 TIONS.—A covered period may not begin until the Clerk
 4 of the House of Representatives certifies that a system
 5 is in place for the secure receipt and validation of the des-
 6 ignation of proxies by Members under this resolution.



Mr. WOODALL. Mr. Chairman—

The CHAIRMAN. The gentleman is recognized.

Mr. WOODALL. Thank you, Mr. Chairman.

This is an amendment to make sure that this resolution does not go into effect until the Clerk of the House has certified that there is a system in place that securely receives and validates proxy designations.

The majority has done everything in its power to move as expeditiously as possible in this direction. And I recognize we have constitutional disagreements about this novel process and we have disagreements about who should be the decision-makers as we move forward in this process.

You will recall, as a part of our roundtable discussion with the Clerk and the Parliamentarian, one thing the Clerk consistently mentioned was that her most important role here in the House, as it relates to remote voting, would be to authenticate—and she said it over and over again, “authenticate, authenticate, authenticate”—to ensure that the person is who they say they are.

I recognize the distinction between remote voting and proxy voting, but it seems to be a small step in the right direction.

Since we all have an interest in making sure that this system is—while it may be novel, certainly none of us want it to be fraudulent, I would ask that we add the amendment that says we shall not move forward without an affirmative certification from the Clerk that the House has in place a system to securely receive and validate these proxy designations.

The CHAIRMAN. Thank you.

You have heard the gentleman’s amendment. Any comments?

I would urge a “no” vote. We have been in contact with the Clerk’s Office. We feel confident that we will have a system in place that adheres to all the principles that we all care about. Adding another layer of bureaucracy I don’t think makes a lot of sense.

Mr. WOODALL. Mr. Chairman.

The CHAIRMAN. Yes?

Mr. WOODALL. I know it has been over a month, but when you were interviewed on the CARES Act, I know you recall, you said, “I think it is not only important that Congress be competent but that we should also look competent, going forward.” And I don’t think a \$2 trillion bill should be a practice run on a new form of remote voting.

I know how concerned you are. I know you don’t want to move forward if the Clerk says, “I am not ready yet.” What is the harm in having the office of the House that is in charge of voting integrity certify that we have voting integrity before we move forward? I just don’t understand the harm. And if there is a harm, I would appreciate being corrected.

The CHAIRMAN. Yeah. I trust my staff who have been working on this, and I feel confident that we have a good measure.

So the vote is now on the Woodall amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mr. WOODALL. Could I get a roll call, please, Mr. Chairman?

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?
 [No response.]
 The CLERK. Mrs. Torres?
 Mrs. TORRES. No.
 The CLERK. Mrs. Torres, no.
 Mr. Perlmutter?
 Mr. PERLMUTTER. No.
 The CLERK. Mr. Perlmutter, no.
 Mr. Raskin?
 Mr. RASKIN. No.
 The CLERK. Mr. Raskin, no.
 Ms. Scanlon?
 [No response.]
 The CLERK. Mr. Morelle?
 Mr. MORELLE. No.
 The CLERK. Mr. Morelle, no.
 Ms. Shalala?
 Ms. SHALALA. No.
 The CLERK. Ms. Shalala, no.
 Ms. Matsui?
 [No response.]
 The CLERK. Mr. Cole?
 Mr. COLE. Aye.
 The CLERK. Mr. Cole, aye.
 Mr. Woodall?
 Mr. WOODALL. Aye.
 The CLERK. Mr. Woodall, aye.
 Mr. Burgess?
 Dr. BURGESS. Aye.
 The CLERK. Mr. Burgess, aye.
 Mrs. Lesko?
 Mrs. LESKO. Aye.
 The CLERK. Mrs. Lesko, aye.
 Mr. Chairman?
 The CHAIRMAN. No.
 The CLERK. Mr. Chairman, no.
 The CHAIRMAN. The clerk will report the total.
 The CLERK. Four yeas, six nays.
 The CHAIRMAN. The amendment is not agreed to.
 Further amendments?
 Mr. Cole.
 Mr. COLE. Thank you very much, Mr. Chairman. I have an amendment at the desk.
 The CHAIRMAN. The clerk will——
 Mr. COLE. I would ask that the reading be suspended.
 The CHAIRMAN. Yeah. If the clerk would report the amendment.
 Okay.
 The CLERK. Amendment to House Resolution 965, offered by Mr. Cole of Oklahoma.
 [The amendment of Mr. Cole follows:]

AMENDMENT TO H. RES. _____
OFFERED BY M. _____

Add at the end of section 1 the following new subsection:

1 (e) REQUIRING CONCURRENCE OF MINORITY LEAD-
2 ER.—Notwithstanding any other provision of this resolu-
3 tion, the Speaker may not designate a covered period
4 under this section without the concurrence of the Minority
5 Leader.



The CHAIRMAN. The gentleman is recognized.

Mr. COLE. Thank you very much. I will be quick about this, because I think the fate will be quick as well, but my amendment simply would change the resolution to say that proxy voting cannot be authorized without the concurrence of the minority leader.

And, you know, I know there is some concern, and I think it is a very legitimate concern, on the part of the majority that—we live in a majoritarian institution, and I respect that. But this is an extraordinary measure for extraordinary times.

And I know, Mr. Chairman, you will recall, when we had our discussion over this particular item, I think the minority leader showed a great deal of flexibility. He was very sensitive to the fact that this was a power that, if it was used inappropriately, you know, would have him effectively deciding what came on the floor, as the majority leader appropriately does. That is not something he wanted to do.

And so he asked, he said, look, we would give it up for a month at a time, or a time period, or if you guys can find a set of matrix that, under these circumstances, you know, it would sort of automatically kick in.

So I would just say that I think, while I don't expect my friends to agree with this, this is an extraordinary moment. We have never done this before. We ought to do it bipartisan. I think the minority leader has shown that he would be willing on most occasions, again, to be extraordinarily respectful in the use of this.

So, with that, I would urge passage of the amendment.

The CHAIRMAN. I thank the gentleman.

And, again, I guess my response to this was that, when—you know, we obviously think that this is necessary at this moment. And when I asked the minority leader specifically whether he would concur, he said no. So, basically, if we agree to this, we are basically killing this for now. So I would urge a "no" vote.

The vote now is on the amendment from the gentleman from Oklahoma.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mr. COLE. Roll call.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

[No response.]

The CLERK. Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.
 Ms. Shalala?
 Ms. SHALALA. No.
 The CLERK. Ms. Shalala, no.
 Ms. Matsui?
 Ms. MATSUI. No.
 The CLERK. Ms. Matsui, no.
 Mr. Cole?
 Mr. COLE. Aye.
 The CLERK. Mr. Cole, aye.
 Mr. Woodall?
 Mr. WOODALL. Aye.
 The CLERK. Mr. Woodall, aye.
 Mr. Burgess?
 Dr. BURGESS. Aye.
 The CLERK. Mr. Burgess, aye.
 Mrs. Lesko?
 Mrs. LESKO. Aye.
 The CLERK. Mrs. Lesko, aye.
 Mr. Chairman?
 The CHAIRMAN. No.
 The CLERK. Mr. Chairman, no.
 The CHAIRMAN. The clerk will report the total.
 The CLERK. Four yeas, seven nays.
 The CHAIRMAN. The amendment is not agreed to.
 And let me just say for the record, Ms. Scanlon is not here right now because she is presiding over the House floor. So she will be back shortly.
 Further amendments?
 Mr. Cole.
 Mr. COLE. Thank you very much, Mr. Chairman. The second bite at the apple may be not so difficult. My amendment—well, I have an amendment at the desk and would ask——
 The CHAIRMAN. The clerk will report the amendment.
 The CLERK. Amendment No. 3 to House Resolution 965, offered by Mr. Cole of Oklahoma.
 [The amendment of Mr. Cole follows:]

AMENDMENT TO H. RES. 895
OFFERED BY M. _____

Page 3, insert after line 6 the following:

- 1 (4) SUNSET.—
- 2 (A) IN GENERAL.—Notwithstanding any
- 3 other provision of this resolution, a covered pe-
- 4 riod may not be in effect after June 30, 2020.
- 5 (B) REQUIREMENT FOR RESOLUTION EX-
- 6 TENDING COVERED PERIOD.—A resolution to
- 7 provide that a covered period may be in effect
- 8 after June 30, 2020 shall not take effect unless
- 9 the resolution is agreed to by two-thirds of the
- 10 Members present and voting on such resolution.



Mr. COLE. I would ask to dispense with the reading, Mr. Chairman.

The CHAIRMAN. Without objection.

Mr. COLE. Thank you very much.

Basically, this just says, look, okay, let's try this for 45 days, and let's give this extraordinary power to the Speaker, which we have never done before in the 230-odd-year history of this institution. If it works well, then let's extend it, but it would require a two-thirds vote—in other words, some bipartisan buy-in. So we will give it a trial run, come back, and see if we can find bipartisan consensus.

I know, Mr. Chairman, you have mentioned a number of times that you have talked to some of our Members that probably are supportive. I think if they saw it work for 45 days, that might encourage them to vote in that direction.

And, again, I think, that way, we would bring what you want to do about with a bipartisan vote, as opposed to what is probably going to happen tomorrow, a party-line vote. So I just offer that for your consideration, Mr. Chairman.

The CHAIRMAN. Appreciate it.

You have heard the gentleman's amendment. The vote is on the Cole amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mr. COLE. Can I have a roll call?

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

[No response.]

The CLERK. Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?
 Dr. BURGESS. Aye.
 The CLERK. Mr. Burgess, aye.
 Mrs. Lesko?
 Mrs. LESKO. Aye.
 The CLERK. Mrs. Lesko, aye.
 Mr. Chairman?
 The CHAIRMAN. No.
 The CLERK. Mr. Chairman, no.
 The CHAIRMAN. How is Ms. Scanlon recorded?
 The CLERK. Ms. Scanlon is not recorded.
 Ms. SCANLON. No.
 The CLERK. Ms. Scanlon, no.
 The CHAIRMAN. The clerk will report the total.
 The CLERK. Four yeas, eight nays.
 The CHAIRMAN. The amendment is not agreed to.
 Further amendments?
 Mr. WOODALL. Mr. Chairman, I have an amendment at the desk.
 The CHAIRMAN. Mr. Woodall.
 The clerk will report the amendment.
 The CLERK. Amendment No. 4 to House Resolution 965, offered
 by Mr. Woodall of Georgia.
 [The amendment of Mr. Woodall follows:]

AMENDMENT TO H. RES. 895
OFFERED BY M. . _____

In section 1(a), strike “or record the presence of such other Member”.

In paragraph (2) of section 3(a), strike “or records a presence”.

In section 3, strike subsection (b) and redesignate the succeeding provisions accordingly.

In paragraph (1) of section 3(b) (as so redesignated), strike “or recording the presence”.

In paragraph (1) of section 3(b) (as so redesignated), strike “or quorum call”.

In paragraph (2) of section 3(b) (as so redesignated), strike “or recording the presence”.

In paragraph (2) of section 3(b) (as so redesignated), strike “or recorded presence”.

In paragraph (3) of section 3(b) (as so redesignated), strike “or recording the presence”.

In paragraph (3) of section 3(b) (as so redesignated), strike “or record such presence”.

G:\CMTE\RU\16\PROXMIN14.XML

2

In paragraph (3) of section 4(a), strike “or record their presence”.

Strike paragraph (4) of section 4(a) and redesignate the succeeding provisions accordingly.



Mr. WOODALL. Mr. Chairman, you heard most of the concern about constitutionality reflected on the Constitution's requirement of a quorum. My amendment would very simply say and move forward with the other issues that you want to move forward with but let's not have proxy voting as a part of declaring a quorum.

There is no doubt that litigation would be involved. It matters not that our last crisis quorum language was passed by a Republican majority, was passed by a Democratic majority, was done in a bipartisan way; it still would have been the subject of constitutional review, had it ever been utilized. You don't just anticipate this might be utilized; you believe that it will be utilized.

I ask that we remove that most obvious of the constitutional hurdles so that it is not distracting from the other work that we both agree needs to be done.

The CHAIRMAN. I thank—

Mr. RASKIN. Mr. Chairman.

The CHAIRMAN [continuing]. The gentleman for his amendment.

We have consulted with many constitutional scholars who feel that, in fact, what we are proposing is constitutional. I think whatever we do, somebody will challenge it, but I feel confident that this will withstand any challenge.

And so I would urge a "no" vote.

Mr. RASKIN. Hey, Mr. Chairman.

The CHAIRMAN. Yeah? Mr. Raskin.

Mr. RASKIN. Could I speak a word on the motion?

The CHAIRMAN. Yes.

Mr. RASKIN. I think something fascinating has emerged from today's proceedings, which is that we seem to have a pretty strong bipartisan consensus, or at least among the Republican witnesses who came to testify, that the current rule, adopted under a Republican majority, is unconstitutional because it allows for two Members to constitute a quorum.

By enacting this rule, we are going to dramatically expand the number of people who are required to create a quorum. So it is a dramatic improvement over the current rule, which is now reputedly unconstitutional, according to most of the people who have spoken about it today.

So this, at least, is moving us in the right direction, because it says a quorum is exactly that, is a quorum. It is a majority of the people—a majority of the people who are participating, who are casting their votes, and who are intending to participate in the proceedings, as opposed to the current rule, which says that 2 people alone, excluding the other 433, can constitute a quorum.

So I rise in opposition to that amendment.

The Chairman. Thank you.

Mr. Woodall.

Mr. WOODALL. Mr. Chairman, just to dispel that, because it has become a common narrative, number one, it is not a Republican rules change. It was enacted first by a Republican Congress in 2005; it was enacted next by a Democratic Congress in 2007; next by a Democratic Congress in 2009; and then by the Congress I was elected in in 2011.

So it has been a shared priority, just as this is a shared priority: how to get Congress back to work in the unthinkable event of a ca-

tastrophe. And what it said is, have a quorum call that is open for 72 hours and allow every Member possible to get there. And then, if you can't get a real quorum then, have the House open for another 24 hours for a quorum call, and let that number, however many people can get there within 96 hours, let that count in this unthinkable, catastrophic situation as your new quorum.

So to suggest that only two of us survived a mass-casualty accident, as unthinkable as that is, yes, that provision would allow the only two surviving Members of the United States House of Representatives to conduct business, not because we thought that was the best answer, but because that was the best we could do in those times. I wasn't elected at that time.

But to suggest that having 2 people, in your example, run the House of Representatives is unconstitutional but having 22 people run it does constitute a quorum, well, that is just laughable. Either the House is able to change the rules in both cases or the House is able to change the definition of "quorum" in neither case.

But this very discussion demonstrates that it is going to be the topic of legal conversation. I would posit that the work that we do together over the next 60 to 90 days is going to be incredibly consequential work for the Nation. And I just don't know why, if this is where we have laser-focused on where the biggest problem is, we would put our constituents and our policies at that risk.

And I thank the chairman for his indulgence.

Mr. RASKIN. Mr. Chairman, could I just be entitled to a moment—

The CHAIRMAN. Yes.

Mr. RASKIN [continuing]. To respond to Mr. Woodall on that?

The first point we have to make is that this is what the Supreme Court considers a political question. It would invoke the Political Question Doctrine, meaning that it is up to the House of Representatives. It is our rule.

That is why this existing rule, adopted under a Republican Congress—and succeeding Congresses of both Republican and Democratic character have kept it in there—has stayed on the books despite the fact that we have the testimony of the outraged witnesses that this is unconstitutional. They were more outraged about the proposal than the current rule, but, nonetheless, their outrage presumably flows to any rule governing outside of their interpretation of what a quorum requirement is.

Now, here is why I think there is a big qualitative difference between what we are doing and what the existing rule is, which has been fine with most of the people because people haven't focused on it. That rule says that two people could end up constituting a quorum of the entire House of Representatives, which is totally antithetical to the majority quorum requirement; whereas what we are saying is a majority can be constituted of people who call up and directly give their proxy to another Member.

So I understand those who are saying it has to be physical voting. I think we already crossed that bridge when we went to electronic voting. There were people at that time who were saying it was unconstitutional to have electronic voting. They said, no, it calls for the ayes and the nays, it has to be a spoken vote or it has

to be a written vote. But, no, we went to electronic voting, and the Republic hasn't collapsed.

The critical point is that the intent of the Member to cast his or her legislative will is vindicated by the system that we have adopted in our rule. And the current proposed rule is a dramatic improvement over that two people can constitute a quorum.

Now, if what you are saying is, "Well, that is just in emergency circumstances," then you are conceding that emergency circumstances can change Congress's treatment of the quorum. And we are changing our treatment of it in a much more mild and modest way than allowing two Members to speak for the entire body.

I yield back, Mr. Chairman.

Mr. WOODALL. To be fair, Mr. Chairman——

The CHAIRMAN. Yes.

Mr. WOODALL [continuing]. Again, these were mass-casualty events that we were responding to. If I am dead, the quorum requirement for the House declines. It is not hypothetical; it is actual.

And that is what this language, as sobering as that is, anticipated, is that if 433 of us are dead, then 2 of us can constitute a quorum. And that is an outrageous outcome for the United States of America, an unthinkable outcome, but this was the best we could do with what we had to work with.

I am just——

The CHAIRMAN. Would the gentleman yield?

Mr. WOODALL. I would be happy to yield.

The CHAIRMAN. I think you may be mischaracterizing what happened in 2005 a little bit, because it doesn't contemplate that everyone has to be dead for there to be a diminished quorum. I mean, it could be for a whole number of reasons, including contagion.

Mr. WOODALL. The chairman misunderstood me. If 433 of us are dead, 2 people does——

The CHAIRMAN. Right, right.

Mr. WOODALL [continuing]. In fact, constitute a quorum.

The CHAIRMAN. Right, right. But I am simply—yeah. But I think that he raises a good point, and that is, sometimes, you know, the standing rules get passed on from Congress to Congress. But I think enough people, in a bipartisan way, have raised issues about this that whoever the next chairman of the Rules Committee is ought to take a good look at it before we pass the next set of rules, all right?

You have heard the gentleman's amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Does the gentleman want a roll call?

Mr. WOODALL. Please.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.
 The CLERK. Mr. Perlmutter, no.
 Mr. Raskin?
 Mr. RASKIN. No.
 The CLERK. Mr. Raskin, no.
 Ms. Scanlon?
 Ms. SCANLON. No.
 The CLERK. Ms. Scanlon, no.
 Mr. Morelle?
 Mr. MORELLE. No.
 The CLERK. Mr. Morelle, no.
 Ms. Shalala?
 Ms. SHALALA. No.
 The CLERK. Ms. Shalala, no.
 Ms. Matsui?
 Ms. MATSUI. No.
 The CLERK. Ms. Matsui, no.
 Mr. Cole?
 Mr. COLE. Aye.
 The CLERK. Mr. Cole, aye.
 Mr. Woodall?
 Mr. WOODALL. Aye.
 The CLERK. Mr. Woodall, aye.
 Mr. Burgess?
 Dr. BURGESS. Aye.
 The CLERK. Mr. Burgess, aye.
 Mrs. Lesko?
 Mrs. LESKO. Aye.
 The CLERK. Mrs. Lesko, aye.
 Mr. Chairman?
 The CHAIRMAN. No.
 The CLERK. Mr. Chairman, no.
 The CHAIRMAN. The clerk will report the total.
 The CLERK. Four yeas, eight nays.
 The CHAIRMAN. The amendment is not agreed to.
 Further amendments?
 Mr. WOODALL. Mr. Chairman?
 The CHAIRMAN. Mr. Woodall.
 Mr. WOODALL. Mr. Chairman, given the committee's reluctance
 to accept that last amendment, I have an amendment at the desk.
 The CHAIRMAN. The clerk will report the amendment.
 The CLERK. Amendment No. 5 to House Resolution 965, offered
 by Mr. Woodall of Georgia.
 [The amendment of Mr. Woodall follows:]

AMENDMENT TO H. RES. _____
OFFERED BY M. _____

Add at the end of section 1 the following new subsection:

1 (c) REQUIRING REPORT BY GENERAL COUNSEL ON
2 DEFENDING PROXY VOTING AGAINST CLAIMS OF UNCON-
3 STITUTIONALITY.—A covered period may not begin until
4 the General Counsel of the House of Representatives sub-
5 mits to the Bipartisan Legal Advisory Group under clause
6 8 of rule II, the chair and ranking minority member of
7 the Committee on the Judiciary, and the chair and rank-
8 ing minority member of the Committee on Rules a report
9 describing the grounds on which the General Counsel will
10 defend the implementation of proxy voting under this reso-
11 lution against claims that such voting is unconstitutional.



Mr. WOODALL. I recognize that you have consulted with legal scholars on this. I also recognize that most of the Supreme Court decisions I read are five-four, and so legal scholars can disagree, and it matters who has the five and who has the four.

What my amendment would suggest is that, since the House General Counsel is the one that will be representing the House in these legal contests that are undoubtedly to follow, that the House General Counsel present its theory for defending proxy voting in court to the Bipartisan Legal Advisory Group and explain what that rationale is.

Here we are, the committee of jurisdiction. We didn't have a single constitutional scholar, with the privileged exception of Mr. Raskin, come and testify before the committee today. We didn't have that opportunity.

I know everyone shares this concern. It is not a partisan issue; it is a House's will issue. And so this amendment would simply require that the Bipartisan Legal Advisory Group be presented with that legal theory, as would the committees of jurisdiction, so that all Members can move forward with confidence that our policy decisions will be respected by the courts.

The CHAIRMAN. Yeah. No, I oppose the amendment. I think that there is—I mean, every legal scholar we have talked to has not seen any constitutional issues with regard to what we are trying to do.

I think that my colleague submitted a letter from some guy, Mr. Strand, who I don't think is a legal scholar. I don't even think he is a lawyer. But, in any event—

Mr. WOODALL. Mr. Chairman, if every lawyer you talked to had the same opinion, I am very suspicious of what has happened.

The CHAIRMAN. Let me also—if you are talking congressional scholars, let me also introduce and ask unanimous consent to include the statement of Norm Ornstein, who we all know is a congressional scholar.

[The information follows:]

Dear Chairman McGovern,

I want to commend you for the careful and thoughtful report you have issued and on which the House will soon act to provide the first important and meaningful steps to allow the House to operate during a dire emergency that may leave large numbers of members unable to work and be present in the Capitol to meet, vote and do other important business, including crafting and marking up legislation and doing important oversight.

As you know, I have been focused since 9/11 on making sure we have a functioning Congress at times of emergency; Congress is the first article in the Constitution, the first branch, for a reason, and it is essential for our freedom and our system of democracy that it be working and acting at all times, but especially during crises. The alternative is government by executive fiat, or no government at all. That spurred the creation of the Continuity of Government Commission, co-chaired by the late Lloyd Cutler and former Senator Alan Simpson, and which I have served as senior counselor.

My first interests, of course, stemmed from the terrorist attacks in 2001, but they were broadened by the anthrax scare that followed shortly thereafter. If it had been more directed and concerted, it could have resulted in widespread deaths and incapacitations of lawmakers in the House and Senate, meaning no quorum to meet the express Constitutional requirement and therefore no Congress for months or longer. That set of events also meant that in our Continuity of Government Commission, we had to consider the possibility of a crisis that could include a bio-attack, a pandemic, or a natural disaster. One of the things we discussed and considered, especially reflecting the interest of your colleague Jim Langevin, was the need to have a capability for Congress to debate and vote remotely if members were scattered across the country and could not meet together face to face in the Capitol or another designated forum.

Unfortunately, Congress, in the nearly 20 years since 9/11, took no significant steps to deal with these issues. Now they are back in a very serious way. COVID-19 is deadly, especially for older Americans and especially so when large numbers of people congregate closely together physically, which is a characteristic of Congress. As the congressional physician noted, meeting together in the traditional way is currently dangerous for lawmakers, their staffs, all those working in the Capitol complex, and all those they come into contact with. Travel on common carriers like airlines or trains is also dangerous, and it is possible that airlines will be shut down or curtailed enough that lawmakers back home would not be able to get back to the Capitol if there were an urgent need to meet to act for the benefit of the American people.

So the steps you have proposed, along with Majority Leader Hoyer and House Administration Chair Lofgren are thoughtful, balanced and sensitive to the need to create a plan to meet and vote remotely, while also understanding that this is a big step, given both the traditions of the House and the imperatives built into the Constitution. You commendably recognize that this first set of steps should be temporary, triggered only when absolutely necessary, and can and should be followed by additional action when we are confident that there are secure and usable technologies to allow remote voting, remote debate and deliberation, remote markups in committees, and so on. And you have pledged that you will write regulations that will balance the needs of majority and minority, be transparent, and avoid the kinds of manipulation that can occur with unlimited proxy voting.

I hope the House, in a bipartisan fashion, will endorse your plan and make sure we have a functioning House throughout this terrible crisis, to do what the Framers expected from the people's house, and to protect the interests and liberties of all of us.

Sincerely,

Norman Ornstein
Resident Scholar
The American Enterprise Institute
(Writing as an individual)

The CHAIRMAN. But in terms of legal scholars and constitutional experts, I think we feel very strongly that we are on solid ground.

And so I would urge a "no" vote on the gentleman's amendment.

Mr. WOODALL. To be fair, Mr. Chairman, my amendment only asks that you make your confidence known to the rest of us——

The CHAIRMAN. Right.

Mr. WOODALL [continuing]. Not just with prose, but with substantive legal arguments, and not to those of us who are not constitutional scholars, but to the Bipartisan Legal Advisory Group. And I——

The CHAIRMAN. And if there was going to be a challenge, that would not, probably, negate a challenge from an outside group. So I look at this as more of a delay tactic than anything else, so I would urge a "no" vote.

You have heard—the vote is now on the Woodall amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mr. WOODALL. Roll call, please.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

Dr. BURGESS. Aye.

The CLERK. Mr. Burgess, aye.

Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.
Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Four yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Before I go to the next amendment, I just want to ask unanimous consent to put into the record some statements and letters that have been submitted in support of this bill by Mr. Jeffries, Ms. Kuster, Mr. Langevin, Mr. Peters, Mr. Thompson of California, Mrs. Trahan, Mr. Kildee, Perlmutter, Levin, Lowenthal, and Lawrence, and Mr. Cárdenas, Ms. Sánchez, Mr. Vela, and Chairman Pallone.

[The information follows:]

HAKEEM S. JEFFRIES
8TH DISTRICT, NEW YORK
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COURTS,
INTELLECTUAL PROPERTY AND THE INTERNET
SUBCOMMITTEE ON CRIME, TERRORISM,
HOMELAND SECURITY AND INVESTIGATIONS
COMMITTEE ON THE BUDGET
DEMOCRATIC CAUCUS
CHAIR



Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON OFFICE:
2433 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-1606
DISTRICT OFFICES:
CENTRAL BROOKLYN OFFICE:
55 HANSON PLACE, SUITE 603
BROOKLYN, NY 11217
(718) 237-2211
SOUTH BROOKLYN OFFICE:
445 NEPTUNE AVENUE, FIFTH FLOOR
BROOKLYN, NY 11224
(718) 373-0033
JEFFRIESHOUSE.GOV

May 13, 2020

The Honorable James P. McGovern
Chairman
Committee on Rules
H-312, The Capitol
Washington, D.C. 20515

Dear Chairman McGovern:

Thank you for your ongoing leadership during this time of crisis. Please see my statement below in support of remote voting by proxy:

As the House continues its work during this trying time, we must have a safe, secure and reliable way of conducting our most essential duty – passing legislation on behalf of the American people. Remote voting by proxy offers a temporary, commonsense solution that will allow the House to operate safely and effectively during this crisis. The proposal crafted by Chairman McGovern allows committees to continue their important work remotely, while also providing Members with the ability to vote on legislation without the threat of hacking or undue influence from bad actors. I stand in strong support of the proposal and believe it is the best path forward as we continue to confront this pandemic.

Best,

Congressman Hakeem Jeffries
Chairman, House Democratic Caucus

Statement to the Committee on Rules in Support of H. Res. 965
Congresswoman Ann Kuster (NH-02)

“As Americans collectively work together to bend the curve and mitigate the spread of COVID-19, it is imperative that the United States House of Representatives continues to function and address this public health and economic crisis.

I support Chairman McGovern’s plan to conduct remote voting by proxy, which will allow Members who are unable to travel to cast their vote for critical legislation in response to this pandemic. Furthermore, I am thankful that this proposal enables committees to work remotely during this critical time. This plan is thoughtful, measured and temporary.

At a time when we must act as one nation, we must ensure that Members of Congress be given the flexibility to conduct official committee business, vote remotely by proxy, and allow their constituents priorities to be heard.” Rep. Ann McLane Kuster (NH-02)

**OFFICE OF CONGRESSMAN
JIM LANGEVIN**

FOR IMMEDIATE RELEASE:

May 13, 2020

**Langevin Statement on House of Representatives Revised Proxy Voting
Proposal**

WASHINGTON – Congressman Jim Langevin (D-RI), co-founder and co-chair of the Congressional Cybersecurity Caucus and a member of the United States Cyberspace Solarium Commission, issued the following statement regarding Rules Committee Chairman Jim McGovern’s revised proposal for proxy voting in the House of Representatives. Congressman Langevin, who first proposed an e-Congress capability following the September 11 attacks, praised the initial resolution from Chairman McGovern when it was released last month.

“Once again, I commend Chairman McGovern for overseeing a deliberative process while drafting this resolution to allow proxy voting. The proposed changes to the House Rules are absolutely necessary to ensure that members of Congress can continue our vital legislative and oversight functions, while protecting public health. I strongly believe that we need a capability for conducting Congressional business if we are unable to meet in Washington, DC; however, I also believe that there are very real cybersecurity concerns that must be addressed before such a system goes live. The McGovern resolution appropriately allows for in-person proxy voting for the duration of the public health emergency, and it holds open the possibility of remote voting if a secure system can be developed and verified. This approach balances the many risks to Congressional operations very well. Between the proxy voting proposal and the ability for House committees to work remotely, I have every confidence we will be able to carry out our Constitutional duties in accordance with recommendations from the Office of the Attending Physician to maintain maximum and effective telework.

“This step cannot be the end of our conversations on continuity of Congress. We need a permanent framework that will account for remote Congressional operations and for the possibility of the death or incapacitation of a significant number of elected representatives. I look forward to continuing to work with Chairman McGovern to address these issues going forward.”

SCOTT H. PETERS
52ND DISTRICT, CALIFORNIA



2338 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-0508
4350 EXECUTIVE DRIVE, SUITE 105
SAN DIEGO, CA 92121
(858) 455-5550

Congress of the United States
House of Representatives
Washington, DC 20515

May 13, 2020

The Honorable James P. McGovern
Chairman, House Rules Committee
H-312, The Capitol
Washington, D.C., 20515

The Honorable Tom Cole
Ranking Member, House Rules Committee
H-312, The Capitol
Washington, D.C., 20515

Chairman McGovern, Ranking Member Cole, and members of the Rules Committee. Thank you for this opportunity to comment on the very important proposals for remote voting.

Today we face a health crisis unknown in our lifetimes – a virus that spreads easily among us, that can hide itself as asymptomatic for a time can suddenly turn deadly. We have no vaccine to create herd immunity, nor a treatment nor cure, nor even enough tests to tell us who's got it and who doesn't. So all we can do to protect ourselves now and for the foreseeable future, and to keep our health care system from being overwhelmed, is to separate ourselves. That's how we lower the chance that the virus spreads. That's why governors and mayors across the country have ordered us to stay at home, to work from home, and to avoid travel if we can.

That's exactly what Congress did when we passed the CARES Act on March 27th. Our leadership from both parties worked to pass the bill on unanimous consent, and when one member objected, we achieved a quorum with members who could travel safely, often by driving alone in their cars. We encouraged other members to stay away from planes and airports and each other. By the way, that conveyed to the public that we in Congress understood the health challenge – we were aware that every time Members of Congress travel from across the country to Washington, DC, we put each other, our staff, Capitol Police and other workers, our families and ultimately our constituents at risk of infection.

Since then, conditions in Washington DC have become more dangerous – it's one of our nation's COVID hot spots. It's high time for us to do what we've asked -- and others have ordered -- our constituents to do. Figure out how to work from home.

I've heard the argument from Senate Leader McConnell and from some Democrats that because we ask people on the front lines to go to work, that we lawmakers have to show up in DC to work. But that argument misses the point. Some people – essential workers – can't stay home. If you are a doctor

SHP/dz

SCOTT H. PETERS
52ND DISTRICT, CALIFORNIA



2338 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-0568

4350 EXECUTIVE DRIVE, SUITE 105
SAN DIEGO, CA 92121
(858) 455-5558

Congress of the United States
House of Representatives
Washington, DC 20515

or a nurse, or someone who cleans hospital rooms, you have to go to the hospital to do your job. If you are a grocery clerk or checker, you have to go to the grocery store to do your job. If you are a fire fighter, or a police officer or an EMT, you have to go where people are in harm's way to do your job.

But if you're an accountant, or a lawyer, or a billing clerk or any other office worker – your job is still very important – but we've ordered you to stay home, because the technology available today makes it possible for you to do your job from your home. It's not great, but it's a way Americans have stepped up to make it work, and not to become vectors for the spread of this disease.

We in Congress are not first responders. Fundamentally, we have office jobs – very important office jobs that a lot of people depend on – but office jobs, consisting of phone calls, meetings, and more meetings. Like the rest of America, we can have our meetings electronically. We should live by the same rules we impose on other American office workers.

We are public servants, a concept reflected in the joint statement by Speaker Pelosi and Leader McConnell to reject the President's offer to supply Congress with test kits. Of course, Congress should not take test kits from hospital workers, first responders or grocery workers. Nor should we continue to travel and meet in a way that heightens the risk for those same people. We should follow the lead of American businesses, nonprofits, religious institutions and families who have found ways to communicate effectively and to make decisions over the phone, or in a variety of computer forums.

Tradition can be honorable, as it is in Congress. But tradition can be a dinosaur and can hurt and slow progress. Some traditions should never be abandoned. I would never give up the opportunity in the ordinary course of our business to see you all face to face, to work with you in committees, to see you twice a day on the House floor, and even to grab dinner after work. But in the face of this once in a lifetime global pandemic, we need to overcome the default position -- that the way we've always done it is the only way it can be done. Congress has adapted to jet travel, to electronic voting and to making our work public on CSPAN. We can adapt to remote work.

It will be difficult, but not as difficult as we might imagine. Just look at how the remote skeptics propose we conduct our business. We would fly from across the country, making connections and taking transportation from Dulles Airport or Baltimore Washington International. Then we would isolate ourselves in our DC residences. Then, if we live too far to walk or don't have a car in DC, we would take transit or be driven to our offices, and we would isolate there. And to participate in our committees, we would make a phone call from our office in Rayburn or Longworth or Cannon to the committee room. Yet all of us have phones in our homes in our districts, and any of us could call the committees from there.

SHP/dz

SCOTT H. PETERS
52ND DISTRICT, CALIFORNIA



2338 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-0568

4350 EXECUTIVE DRIVE, SUITE 105
SAN DIEGO, CA 92121
(619) 455-5550

Congress of the United States
House of Representatives
Washington, DC 20515

We've also heard that in person committee meetings will take up a tremendous amount of physical space. For our larger committees, like Transportation and Infrastructure or Armed Services, only the House chamber is big enough. If all of our committees were to meet in person, it would be impossible for them to meet at the same times. Remote participation is probably the only practical way to allow all committees to function at the same time, and thereby for all members to participate in the legislative process on behalf of their millions of constituents.

Remote voting is not cowardice. It's leadership. In the face of this pandemic, getting Congress to work remotely is an example for the rest of the country that meets this moment. Let us live by the same rules we impose on our fellow citizens. Let's find a way that allows all of our constituents to have a voice. Let's show by our action that we ourselves take this threat seriously.

I thank you for your leadership in this difficult moment.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott H. Peters".

Scott H. Peters
Member of Congress

SHP/dz

MIKE THOMPSON
5TH DISTRICT, CALIFORNIA
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON SELECT REVENUE MEASURES
CHAIRMAN
SUBCOMMITTEE ON HEALTH



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

DISTRICT OFFICES:
2721 NAPA VALLEY CORPORATE DRIVE
NAPA, CA 94558
(707) 226-9898
420 VIRGINIA STREET, SUITE 1C
VALLEJO, CA 94590
(707) 645-1888
2300 CLOVIS CENTER DRIVE, SUITE A100
SANTA ROSA, CA 95403
(707) 542-7162
CAPITOL OFFICE:
406 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3311
WEB: <http://mikethompson.house.gov>

May 13, 2020

The Honorable Jim McGovern
Chairman
House Committee on Rules
H-312 The Capitol
Washington, D.C. 20515

Dear Chairman McGovern,

I write to express my strong support for proxy voting and allowing for flexibility, during these unprecedented times.

The COVID-19 pandemic has created never before seen challenges to the operation of government and the ability of the House to conduct business. Not only are Member's health and safety at risk but the security and integrity of the House of Representatives, is as well. I commend you and your committee for diligently addressing these challenges with integrity and the dedicated intent to ensure the House can conduct the People's business in a safe and secure manner.

This pandemic has drastically changed how our communities operate. Many local governments and small business have adjusted their operations and the House of Representatives must do the same. Again, I commend you and your Committee for your work and I wholeheartedly support proxy voting and allowing for flexibility, during these extreme times.

Sincerely,

MIKE THOMPSON
Member of Congress

Congresswoman Lori Trahan (MA-03)

Statement for the Record

House Rules Committee

May 13, 2020

Mr. Chairman, I am very grateful for your thoughtful leadership in advancing the proposed rule change to allow remote committee proceedings and provide members with the ability to vote by proxy. This is an appropriate measure to help put an end to the spread of coronavirus. As the US death toll exceeds 83,000, we have asked millions of Americans to continue to follow social distancing guidelines to do their part to flatten the curve of COVID-19. We should be expected to do no less.

Thanks to Speaker Pelosi, Leader Hoyer, Chairwoman Lofgren, and yourself, the House has taken necessary steps to provide members and staff with increased telework capabilities. These actions have helped us prevent the transmission of this virus to each other, our families, and our constituents, but we must now go one step further with the implementation of remote committee proceedings and a vote by proxy system.

Like many of my colleagues, I have told my constituents for weeks about the importance of staying home and abiding by the Centers for Disease Control and Prevention guidelines on social distancing. I have also heard the predictions from the medical professionals who have told us that continuing to follow these recommendations is especially crucial in the coming days and weeks.

Your plan is perfectly calibrated to this moment. It was crafted to overcome the hurdles of a proxy system while respecting the individual responsibility of each member to determine how his or her own vote is cast. I thank the Chairman and his committee staff for their considerable efforts in creating this plan. I support the rule's adoption, and I encourage my colleagues to do the same.



Congress of the United States
House of Representatives
Washington, DC 20515

May 13, 2020

Honorable Jim McGovern, Chairman
Committee on Rules
H-312 The Capitol
Washington, D.C. 20515

Honorable Tom Cole, Ranking Member
Committee on Rules
H-152 The Capitol
Washington, D.C. 20515

Dear Chairman McGovern and Ranking Member Cole:

We write today in strong support of the H. Res. 965, which temporarily implements remote voting in the full U.S. House of Representatives and remote committee proceedings during this public health emergency due to the coronavirus.

Members of Congress must continue to faithfully and safely execute the duties of our office while acting in accordance with the social distancing guidelines outlined by medical experts. The suggested temporary rules would allow for Members to proxy vote on behalf of those Members who cannot safely travel to Washington, D.C. This proposed proxy voting system strictly governs the rules where a remote Member would send a letter to the Clerk designating a proxy. Members may serve as a designated proxy for up to ten Members and must receive exact written instruction on each vote. While there is no precedent on the House Floor for proxy voting, there is precedent in House Committees, where it was in place until the 104th Congress.

The implementation of H. Res. 965 would allow committees to hold virtual hearings, markups, and depositions enabling Members to perform vital oversight, conduct fact finding and bring legislation to the Floor. Especially during this national emergency, Congress must continue to do the work of American people, especially overseeing the trillions of dollars allocated by the federal government so far to combat the pandemic. Members also have the responsibility to model compliance with the guidelines recommended by the leading science and health experts without dereliction of our duties. Proxy voting allows for Members to be engaged in work at the Capitol while ensuring their safety and those in their communities.

As the Congress continues to find innovative ways to remain in service of the American people, I am supportive of the provision in H. Res. 965 that will direct the Committee on House Administration to study the use of technology to allow Members to vote remotely in the House. After certification has been completed determining secure and operable technology for remote

voting, the Rules Committee would issue guidance and regulations for implementation that can be authorized by the Speaker to allow Members to cast their votes remotely during the time period covered by the resolution.

We appreciate your hard work on this and the solicitation of advice and ideas from Members for many weeks, including members of both parties. It is our hope that these rules are only necessary for a short period of time and the House of Representatives can return to their normal functions in a safe manner to help families and workers impacted by this terrible health crisis.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel T. Kildee".

Daniel T. Kildee
MEMBER OF CONGRESS

Additional Cosigners

Rep. Ed Perlmutter
Rep. Andy Levin
Rep. Alan Lowenthal
Rep. Brenda Lawrence

Congressman Tony Cárdenas (CA-29) statement in support of changing House Rules to temporarily allow proxy voting and remote legislative proceedings:

“I fully support the resolution introduced by Congressional Leadership to change House Rules and allow Members of Congress to conduct the business of governing remotely. We are living through an extraordinary moment that deserves an equally extraordinary response. Simply conducting business as usual is neither prudent nor safe. Not only does forcing Members into confined spaces for in-person voting and legislative business put my fellow colleagues at risk, it puts the safety of my family in jeopardy including my mother-in-law, a cancer survivor who lives with my wife and me. Changing House Rules to allow for proxy voting is in compliance with the CDC’s guidance for preventing the spread of the virus which will be done safely and securely in a manner that will protect the integrity of the system, without using the kind of technology that is susceptible to hacking by bad actors.

“While some Members may not be physically present for hearings and votes, our unwavering commitment to the American people and resolve remain undeterred. I have been working tirelessly with my colleagues to ensure that families in my District have access to the critical federal support they need during this national crisis.

Rep. Linda T. Sanchez
Rules Committee Statement
5/14/20

Chairman McGovern and Ranking Member Cole, I applaud your efforts to adjust House rules in recognition of the unprecedented challenge we currently face. I also want to recognize the bipartisan task force that tackled this issue and the Rules Committee staff that worked diligently to take continuing feedback and recommendations from Members into account when crafting this updated policy.

Attempting to protect the health and safety of those on the Capitol grounds, while ensuring active fulfillment of our constitutional duties is truly the centerpiece of this proposal. While Congress has now been operating remotely for some time, these temporary changes will expand the tools available to us. We will be able to hold hearings and receive valuable feedback and testimony from experts in a more formalized fashion. To me, this is paramount to informing how we should proceed with further legislative packages to help the American people get back on their feet.

I further appreciate the thoughtfulness exhibited by the committee in crafting this package in consultation with constitutional, health, and technological experts. We all look forward to the day that operations on the Capitol look as close to ‘normal’ as possible, but until that time, this temporary rule change is necessary.

Your plan, which also permits remote voting by proxy, will allow Members of Congress to fulfill their constitutional duty while also keeping their communities, their families, and themselves safe. I also look forward to the outcome of efforts to develop secure technological methods that would allow Members to safely cast a vote from a remote location for the duration of the pandemic.

Again, I applaud your efforts in crafting this sensible approach to our unique challenges and thank you for finding a solution that balances the safety of our Members with our duty to the people we are elected to represent.

Statement to the Committee on Rules in Support of H. Res. 965
Congressman Filemon Vela (TX-34)

As this public health emergency continues, Congress must do all it can to ensure that we are able to work on behalf of the American people, while also abiding by public health experts' calls for social distancing and limited travel. H. Res 965 will allow Members to hold virtual hearings, markups and depositions as well as allow Members to remote vote by proxy. We have all had to adapt to this new reality and will have to learn to continue to adjust as this virus effects our nation. H. Res. 965 was prepared after weeks of bipartisan discussions and will help us move forward to conduct our work on behalf of our constituents.

FRANK PALLONE, JR., NEW JERSEY
CHAIRMAN

GREG WALDEN, OREGON
RANKING MEMBER

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

May 14, 2020

The Honorable James P. McGovern
Chairman
Committee on Rules
U.S. House of Representatives
H 312 – The Capitol
Washington, DC 20515

Re: H. Res. 965

Dear Chairman McGovern:

I write to you in support of H. Resolution 965, which would authorize voting by proxy in the House of Representatives and provide for official remote committee proceedings. By temporarily enabling committees to convene official proceedings remotely, this measure ensures that the Committee on Energy and Commerce can continue to conduct its important legislative, oversight, and fact-finding work during these extraordinary times.

I greatly appreciate the work of the House Rules Committee under your leadership in drafting and putting forward this very important measure. Our Committee will work diligently to ensure that each of our Members can participate remotely, to the greatest extent practicable, from different locations, at our noticed committee and subcommittee hearings, markups, depositions and other business meetings — some or all of which may be virtual in nature.

Thank you in advance for any further support you can provide us in the way of Committee-specific regulations or in addressing any questions that surface as we implement and put these temporary rules and regulations into practice.

Respectfully submitted,



Frank Pallone, Jr.
Chairman

The Honorable James P. McGovern
May 14, 2020
Page 2

cc: Honorable Tom Cole, Ranking Member, Committee on Rules
Honorable Greg Walden, Ranking Member, Committee on Energy and Commerce

The CHAIRMAN. Further amendments?

Mr. WOODALL. Mr. Chairman, are you saying the current House rules allow for the participation of those Members even though they are not physically present here with us today?

The CHAIRMAN. I am asking that their statements be put into the record——

Mr. WOODALL. Ah.

The CHAIRMAN [continuing]. Like we do all the time.

Mr. WOODALL. Thank you, Mr. Chairman.

The CHAIRMAN. Does the gentleman object?

Mr. WOODALL. I do not object. I just recognize how effective the House rules are at solving those issues.

The CHAIRMAN. Yeah. All right. Do you have another amendment?

Mr. WOODALL. Not at this time.

The CHAIRMAN. Okay.

Mr. Burgess.

Dr. BURGESS. Thank you, Mr. Chairman. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 6 to House Resolution 965, offered by——

Dr. BURGESS. I move to dispense with the reading.

The CHAIRMAN. Without objection.

[The amendment of Dr. Burgess follows:]

AMENDMENT TO H. RES. _____
OFFERED BY M. _____

Insert after section 5 the following new section (and
redesignate the succeeding section accordingly):

1 **SEC. 6. REPORT ON ACCURACY AND INTEGRITY OF MEM-**
2 **BER VOTING.**

3 (a) REPORT.—With respect to each year during
4 which a covered period occurs, the Committee on House
5 Administration shall prepare and submit a report ana-
6 lyzing the accuracy and integrity of the votes cast by
7 Members in the House, including the votes cast by des-
8 ignated proxies under this resolution, and shall include in
9 the report a description of any errors in the votes case
10 by designated proxies under this resolution.

11 (b) DEADLINE.—The Committee on House Adminis-
12 tration shall submit the report required with respect to
13 a year under this section not later than 30 days after the
14 end of the year.



Dr. BURGESS. So Amendment No. 6 is simply a good-government amendment. This requires the Committee on House Administration to issue a yearly report on voting integrity that describes any errors that were encountered with proxy voting.

We all know, with the law of unintended consequences, things sometimes turn out differently than what we anticipated. And, again, this as a good-government check, an oversight check, on what we are enacting with this rule.

And I urge an "aye" vote.

And I guess it is accepted. Good enough. Let's move on.

The CHAIRMAN. I mean, look, I think the best oversight we can do is the committees of jurisdiction, including the Rules Committee, ought to do hearings, as this goes on, to see whether it is being implemented the way that we have intended.

And, again, hopefully the President is right that this virus will mysteriously disappear and we won't have to worry about any of this stuff. But, in the meantime, I would urge a "no" vote.

So the vote now is on the Burgess amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Does the gentleman want a roll call?

Dr. BURGESS. Yes, please.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

Dr. BURGESS. Aye.

The CLERK. Mr. Burgess, aye.

Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Four yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments?

Mr. Cole.

Mr. COLE. Thank you very much, Mr. Chairman. I have an amendment.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 7 to House Resolution——

Mr. COLE. I would ask the reading be dispensed with, Mr. Chairman.

The CHAIRMAN. Without objection.

[The amendment of Mr. Cole follows:]

AMENDMENT TO H. RES. 895
OFFERED BY M. . _____

Page 6, insert after line 11 the following:

- 1 (d) MEASURES FOR WHICH VOTES MAY BE CAST OR
 2 PRESENCE RECORDED.—A Member may only cast the
 3 vote or record the presence of another Member as a des-
 4 ignated proxy under this resolution with respect to—
- 5 (1) any vote related to a measure designated by
 6 the Speaker or the Speaker’s designee, in consulta-
 7 tion with the Minority Leader or the Minority Lead-
 8 er’s designee, as a response to the COVID–19 pan-
 9 demic;
- 10 (2) any vote related to a question of the privi-
 11 leges of the House under rule IX;
- 12 (3) any vote on a question unrelated to a spe-
 13 cific measure or matter; or
- 14 (4) a quorum call.



Mr. COLE. Thank you very much.

Mr. Chairman, we will obviously be dealing with a lot of legislation in the next few months—NDAA, approps, things we have talked about today. My amendment would limit the use of proxy voting to literally things related to the coronavirus crisis. We would treat other legislation the way we normally would and proceed.

This amendment is actually the same language that my Democratic colleagues included in their first version of proxy voting 3 weeks ago. So all we are asking here is to do what you were positioned to do, at least 3 weeks ago.

With that, Mr. Chairman, I would yield back.

The CHAIRMAN. Thank you.

I yield to Mr. Perlmutter.

Mr. PERLMUTTER. Mr. Chair, I oppose the amendment by the gentleman. I opposed it when it was in the initial draft of the rule, for at least a couple reasons.

One, we are in a pandemic, through the consultation with the doctor and the Sergeant at Arms.

Two, it had all sorts of limiting factors, the previous did.

But, really, the thing that concerned me is that there will be votes that have to be taken, whether they were appropriations votes or NDAA or those kinds of votes, that have to be taken, and we are still in the pandemic. That was the one reason that I disagreed with the rule as it was written a few weeks ago.

And, two, we already know this virus mutates, and by the end of the year, it could be COVID-20, in which case we still have a problem.

So I felt the approach that was taken in the earlier draft was unreasonably limited. It is still very limited, as Mr. Morelle pointed out when he talked about the novel coronavirus section in the beginning. But we have to conduct our business, and I think this would undercut and needlessly limit it. And I don't want to disenfranchise all those people in this representative government on big issues.

So I would urge a "no" vote on the gentleman's motion.

The CHAIRMAN. Mr. Cole.

Mr. COLE. Thank you very much, Mr. Chairman.

Just to my friend—and he is perfectly right; he has been consistent in his view on this. But I would say, we would be more than happy, number one, to make it just "coronavirus" in general so it was not confined if there was a particular mutation. That is something we are willing to do.

And, again, we are going to do this for this emergency. This is actually what we are going to be focusing on, for the most part, obviously. And I think we are going to be doing it for some years.

But I think, again, this limits it. We are just asking you to be where you were 3 weeks ago. And if you can't be there, as a majority, I would just point out for the record, it sort of does suggest there is a slippery-slope danger here, because we have already moved from where the majority was 3 weeks ago to a different position today. So 3 weeks from now? I mean, yet another movement.

Mr. PERLMUTTER. If I might respond?

The CHAIRMAN. Yes.

Mr. PERLMUTTER. We didn't bring it up. I was going to oppose it at that point. I had spoken to a number of Members and seek to have it stricken. So I think we weren't there. Maybe you guys should have accepted it back then. But I was going to oppose it, and I think a couple others, at least, would have opposed it.

So I yield back. I urge a "no" vote on the gentleman's amendment.

Mr. COLE. Well, I don't think we had the ability to accept it. This was in the majority's, you know, purview.

And this is where you were 3 weeks ago; you have moved someplace else in 3 weeks. So I just make that point to suggest, once you let this particular, you know, rabbit out of the box, it can run a lot of different directions, including ones you didn't expect 3 weeks ago.

I yield back, Mr. Chair.

The CHAIRMAN. I thank the gentleman.

I will just say that, you know, during these last 3 weeks, we have listened to a lot of Members on both sides of the aisle. We have taken some ideas from Republicans. We have heard from our Members. And so, the consensus on our side is that we have a lot of work to do that is not just coronavirus-related. And so I would urge a "no" vote.

The vote is now on the Cole amendment.

Those in favor, say aye.

Mr. MORELLE. Mr. Chairman. I am sorry. Might I just make one additional comment?

The CHAIRMAN. Go ahead.

Mr. MORELLE. Just as it relates to it. It seems to me that, if we adopted this amendment, the question of constitutionality which has been raised, which we don't agree with you on, but constitutionality would still be in play. This doesn't make it more constitutional because you identify only things related to COVID-19.

So I just note that, you know, from our perspective, it rises or falls on the question of whether a pandemic and a national emergency exists, not with what kind of legislation will be taken up.

Mr. COLE. Well—

The CHAIRMAN. The gentleman from Oklahoma.

Mr. COLE. Thank you.

With all due respect to my friend, I didn't suggest it made it more constitutional.

Mr. MORELLE. Okay.

Mr. COLE. Frankly, I have serious constitutional doubts about this whole course regardless. But it does make it more limited and, I think, more traditional.

And, look, from an institutional standpoint, I think if you are going to do something—and one of the things, and I think appropriately, that you have pointed out in the course of the debate—and you, in particular, Mr. Morelle—is that, look, this is very limited. This is 45-day increments. We are trying to be—this is just another limitation.

So I don't think it is—you may disagree with it, but, again, it wasn't advanced as a constitutional argument, and it is just another limitation.

I yield back.

The CHAIRMAN. So the vote is now on the gentleman from Oklahoma's amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mr. COLE. Roll call, please.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Before we go to the next amendment, I want to ask unanimous consent to insert into the record a letter from Mark Pocan, co-chair of the Progressive Caucus, in favor of the resolution.

[The information follows:]

MARK POCAN
2ND DISTRICT, WISCONSIN
COMMITTEE ON APPROPRIATIONS
SENIOR WHIP



10 EAST DOTY STREET, SUITE 405
MADISON, WI 53703
(608) 258-9800
1421 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-2906
POCAN.HOUSE.GOV

UNITED STATES
HOUSE OF REPRESENTATIVES

May 14, 2020

The Honorable Jim McGovern
Chairman
House Rules Committee
H-312, The Capitol
Washington, D.C. 20515

Dear Chairman McGovern:

I write in support of efforts to ensure Members of Congress are able to vote on essential legislation while not physically present in Washington, D.C. during the coronavirus pandemic. Numerous states, including the Wisconsin Legislature, and other nations, including the British Parliament, have already instituted successful virtual legislative meeting procedures.

While I intend to be physically present and voting this week, I know several of our colleagues will be unable to vote in person due to health or travel difficulties. Foreseeing this eventuality, the Congressional Progressive Caucus issued a Whip Question to its Members several weeks ago to measure support for instituting virtual voting in the House of Representatives. Responses from the Caucus were overwhelmingly in support.

I support remote voting efforts in Congress in whatever form they may take, and plan to vote in favor of implementing legislation when it is presented to the full U.S. House of Representatives. I thank you for your friendship and look forward to continuing to work together on this and other matters.

Sincerely,

Mark Pocan
Member of Congress
Co-Chair, Progressive Caucus

The CHAIRMAN. Further amendments?

Mr. WOODALL. Mr. Chairman?

The CHAIRMAN. Mr. Woodall.

Mr. WOODALL. Thank you, Mr. Chairman. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 8 to House Resolution 965, offered by Mr. Woodall of Georgia.

[The amendment of Mr. Woodall follows:]

AMENDMENT TO H. RES. 895
OFFERED BY M. _____

Page 6, insert after line 11 the following:

1 (d) LIMITATION.—A Member may not cast the vote
2 or record the presence of another Member as a designated
3 proxy under this resolution with respect to any bill or reso-
4 lution considered under the suspension of the rules, unless
5 the bill or resolution is designated by the Speaker or the
6 Speaker’s designee, in consultation with the Minority
7 Leader or the Minority Leader’s designee, as a response
8 to the COVID–19 pandemic.



Mr. WOODALL. Mr. Chairman, this amendment respects what Mr. Perlmutter had to say. There is some must-do work that has to happen in this institution, and if we are going to go down this constitutionally perilous path, we should be getting those highest-priority items done.

This would say, for those bills that are not high-priority items, those suspension bills that are non-COVID-related, that we should not use proxy voting then. Whether we are back for a day in the month of June or a week in the month of June or all of the month of June, we can do those suspension bills in person that are non-COVID-related.

Again, thinking about legal challenges coming down the road, for those bills that are not the most expansive but are the most numerous in our congressional workload, let us move those more numerous bills through the traditional process.

The CHAIRMAN. You have heard the gentleman's amendment. Any discussion?

Hearing none, the vote is now on the Woodall amendment.

Those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mr. WOODALL. Roll call, please, Mr. Chairman.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments?

Mr. Cole.

Mr. COLE. Thank you very much, Mr. Chairman.

Mr. Chairman, this is actually a pretty simple bill. I am sort of surprised it wasn't in the text. It simply says no—or, excuse me, amendment—no proxy votes on non-COVID bills that haven't had a committee hearing or markup.

In other words, if we are doing these extraordinary things because of COVID, you know, other things at least ought to be able to go through our committee. Particularly if we have adopted the rule as written, I would hope we continue to attend the committee process and markup process for things that are truly, clearly non-emergency and non-coronavirus-related.

[The amendment of Mr. Cole follows:]

AMENDMENT TO H. RES. 895
OFFERED BY M. _____

Page 6, insert after line 11 the following:

1 (d) LIMITATION.—A Member may not cast the vote
2 or record the presence of another Member as a designated
3 proxy under this resolution with respect to any bill or reso-
4 lution which has not been reported by a committee of the
5 House.



I yield back.

The CHAIRMAN. Yeah, I appreciate—I mean, part of what we require now is that the bills have hearings and rules unless we waive them, and that will be the case here as well. Sometimes things are urgent that we have to move quickly, so I wouldn't want to tie our hands, so I would urge a "no" vote.

The vote is on the Cole amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Would you like a roll call?

Mr. COLE. Yes, please.

The CHAIRMAN. The clerk will call the roll, please.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments?

Mrs. Lesko.

Mrs. LESKO. Thank you, Mr. Chairman. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 10 to House Resolution 965, offered by Mrs. Lesko of Arizona.

[The amendment of Mrs. Lesko follows:]

AMENDMENT TO H. RES. 895
OFFERED BY M

Page 6, insert after line 11 the following:

- 1 (d) LIMITATION.—A Member may not cast the vote
 2 or record the presence of another Member as a designated
 3 proxy under this resolution with respect to any bill or reso-
 4 lution relating to impeachment, censure, or contempt.



Mrs. LESKO. This amendment, members, ensures that the unconstitutional use of proxy votes are not employed should the House consider future impeachment resolutions, censure resolutions, or contempt citations.

And I want to be clear that I don't like anything in this bill, so my amendment is only offered because I know that the Democrats are going to pass this bill and maybe it will make it a little bit better.

I mean, certainly, impeachment, censure, and contempt citations are three extraordinary actions reserved for the greatest of times, and I would certainly hope that we would want all Members here to consider that.

With that, I encourage a "yes" vote, and I yield back.

The CHAIRMAN. Yeah. I would urge a "no" vote on this, because this is like we are throwing everything but the kitchen sink at this thing right now. I don't see any reason to do this. I would urge a "no" vote.

The vote is on the Lesko amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mrs. LESKO. Roll call.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments?

Mrs. Lesko.

Mrs. LESKO. Thank you, Mr. Chairman. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 11 to House Resolution 965, offered by Mrs. Lesko of Arizona.

[The amendment of Mrs. Lesko follows:]

AMENDMENT TO H. RES. 965
OFFERED BY M. .

Page 12, insert after line 24 the following (and re-designate the succeeding provision accordingly):

1 SEC. 6. REDUCTIONS IN MEMBERS' REPRESENTATIONAL
2 ALLOWANCE.

3 (a) USE OF DESIGNATED PROXY IN HOUSE.—If at
4 any time during a fiscal year a Member of the House of
5 Representatives casts a vote or records the presence of an-
6 other Member of the House of Representatives in the
7 House as a designated proxy under this resolution, the
8 Committee on House Administration shall reduce the
9 amount available under the Members' Representational
10 Allowance for such other Member for the remainder of the
11 fiscal year by the amount which would have been paid
12 from the Allowance for the Member's travel expenses (as
13 determined under regulations promulgated by the Com-
14 mittee) if the Member had cast the Member's own vote
15 or recorded the Member's own presence in the House.

16 (b) ATTENDANCE AT COMMITTEE PROCEEDINGS RE-
17 MOTELY.—If at any time during a fiscal year a Member
18 of the House of Representatives attends a proceeding of
19 a committee remotely instead of in person under section

G:\CMTE\RU\16\PROXMINMRA.XML

2

1 4, the Committee on House Administration shall reduce
2 the amount available under the Members' Representa-
3 tional Allowance for such Member for the remainder of
4 the fiscal year by the amount which would have been paid
5 from the Allowance for the Member's travel expenses (as
6 determined under regulations promulgated by the Com-
7 mittee) if the Member had attended the proceeding in per-
8 son.



Mrs. LESKO. Thank you, Mr. Chairman.

I want to offer an amendment that my colleague Representative Mike Johnson from Louisiana and I have worked on together. Mr. Johnson is also going to be introducing this amendment as a stand-alone bill.

This amendment simply states that, should a Member choose to proxy-vote, meaning not be here, their total Members' Representational Allowance, commonly known as MRA, will be reduced by the amount it would take for them to travel to the House under normal circumstances to vote per the 2020 MRA travel expense formula. This is an official document all of our offices have access to from House Administration.

This money saved would be returned to the Treasury. Members shouldn't be able to use funds that were meant for travel on other things. That is not what our constituents want. At this point, we need to give funds back to the American people, not use them for things we aren't even utilizing.

I believe this is a commonsense amendment. If Members choose not to travel, they shouldn't get the money to do so, and we should return it to the Treasury. And I ask for a "yes" vote.

The CHAIRMAN. You heard the gentlewoman's amendment.

I would urge a "no" vote on this.

I mean, let me just say a couple things.

First of all, some people have had to incur more expenses to get here from their districts because normal flights have been canceled.

Secondly, I don't know what you do with your MRA if there is any left over at the end of the year, but I think it usually goes back to the Treasury anyway.

But if Members, you know—Members can do whatever they want to do. If they are not spending the money, they can make it public that they are not spending money on travel, and they can give it back to the Treasury if they want.

Anyway, I would urge a "no" vote.

Mr. WOODALL. Mr. Chairman.

The CHAIRMAN. Yes?

Mr. WOODALL. For folks who don't serve on House Administration, they may not have studied those numbers, but, you know, there is a formula in place. This isn't just about saving money. The formula says, if you live further away—

The CHAIRMAN. Right.

Mr. WOODALL [continuing]. You do, in fact, have higher travel expenses, and so you get more money than everybody else. Mr. Raskin has the smallest MRA sitting here at the table because he lives the closest. So—

The CHAIRMAN. So if you have money left over in your MRA, what do you do with it? Can you write a check out to yourself? What—

Mr. WOODALL. It is the—you are absolutely right—

The CHAIRMAN. I think you could.

Mr. WOODALL. If Members choose to save it. It is the equity issue that—Charlie Norwood was a great fiscal conservative from the State of Georgia. He spent every penny that he had every year, because he said, "This is my constituents' money, and I am spending it to serve them. I am going to spend every penny."

The reason California Members get more money than East Coast Members do is because their travel is further. And if they are not traveling, they are just getting more money to serve their constituents——

The CHAIRMAN. What——

Mr. WOODALL [continuing]. Than East Coast Members are getting to serve their constituents, is the nature of the amendment.

The CHAIRMAN. Yeah. I strongly object to this. This is—I mean, we have just appropriated trillions of dollars to try to help people. We should be doing oversight to make sure small businesses are getting what we intended them to get. We should make sure that hospitals have the PPE that they need, that we are funding testing.

So I just—whatever. I mean, people——

Mr. PERLMUTTER. Mr. Chairman.

The CHAIRMAN. Yes, Mr.——

Mr. PERLMUTTER. So I just would object to the gentlelady's amendment.

I would say we are spending more money, at this point, certainly in my office, doing telephone townhalls to reach people because of so many questions about unemployment, so many questions about small business, so many questions about health, and adding people like our health officers and somebody from the SBA.

Actually, I am finding that this is much more expensive and have hope that the House Administration and the Appropriations Committee will offer us some additional money to cover all the telephone townhalls to communicate with the people that we represent.

So I object to the amendment and urge a “no” vote on it.

Mrs. LESKO. Mr. Chair.

The CHAIRMAN. Mrs. Lesko.

Mrs. LESKO. Can I respond?

The CHAIRMAN. Yes, absolutely.

Mrs. LESKO. Actually, in the last bill, every Member was given extra money to do telephone townhalls and to deal with the coronavirus, so we already got a bunch of extra money.

In fact, I have constituents complaining about it because they think that it was used for our salaries or something, which it was not meant to be. It was meant to be used for tele-townhalls to deal with the coronavirus, with, like, equipment that our staff may need to use to telecommute, and those type of things. So we were given extra money.

But my amendment deals specifically in reaction to the proxy bill. And the proxy bill says, okay, Members that don't basically want to come in to work can turn over their vote to someone else. Well, then, they are not traveling here.

And we have a formula that all the offices have. It is a setout formula. It is a certain amount of money per mile, and it is based on how far away, from the farthest part of your district, you are to Washington, D.C. And if you are not going to fly here, if you are not going to travel here, then why should you get the money? That is all my bill does.

So thank you, and I yield back.

Mr. RASKIN. Mr. Chairman.

The CHAIRMAN. Yeah, Mr. Raskin.

Mr. RASKIN. I understand, and I would be delighted to be corrected if I am wrong, but I understand from my chief of staff and a couple of other chiefs of staff that there was no additional MRA allowance given. That money went to the House of Representatives for maintenance staff. So if somebody could clear this up definitively, that would be great.

In any event, that kind of story, I think, contributes to the mythology about what is really going on here. And I want to say that it seems like there is so much outrage about such trivia being voiced today, and we hear so little about the 82,000 American citizens who have died in this process. We have heard so little about the tens of millions of Americans thrown out of work in this process, about spreading hunger in society, the people lined up at homeless shelters, people lined up at food banks. And we get this kind of delight in trivia. I just—I don't really get it.

But let me just say—and that is a general statement. Let me say specifically about this amendment, what I would recommend to the gentlelady—and I know she has offered this in all sincerity—is that she combine with those people who are saying that Members who sleep in their offices should have to return part of their salary to the United States Government because part of their salary undoubtedly is to cover the costs of their living in Washington when they are here. And they are certainly drawing on Federal money when they live in their offices, something which is actually contributing to the public health danger of being on Capitol Hill.

So I don't think that her amendment is going to pass, but I think she should go back and combine forces with the people who are saying that Members should pay back part of their salary if they live in their offices.

I yield back, Mr. Chairman.

The CHAIRMAN. Mrs. Lesko.

Mrs. LESKO. Thank you, Mr. Chairman.

Not to belabor the point, but since it was brought up, I have information that \$8.8 million for MRA was included in the bill, and that is estimated to \$20,000 for each office.

So thank you.

Mrs. TORRES. That was for interns.

The CHAIRMAN. We are being told that was for interns.

But putting that aside, my suggestion is that maybe we should bring this up with House Administration and go that way. So I would urge a "no" vote.

All those in favor of the Lesko amendment, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mrs. LESKO. Roll call.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments?

Mr. Cole.

Mr. COLE. Thank you very much, Mr. Chairman.

And let me just quickly note for the record, our friend Mr. Burgess is also having a conflicting hearing and had to go, so I am actually offering the amendment on his behalf. And I just want the committee to understand why he is not here.

The CHAIRMAN. We appreciate that.

Mr. COLE. Thank you very much.

This amendment—it says my amendment; it is actually Mr. Burgess's amendment—would—oh, sorry. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 13 to House Resolution 965—

Mr. COLE. I ask that the reading be dispensed with.

The CHAIRMAN. Without objection.

[The amendment of Dr. Burgess follows:]

AMENDMENT TO H. RES. 895
OFFERED BY M. _____

Page 13, line 2, strike “To the greatest” and insert
“(a) IN GENERAL.—To the greatest”.

Page 13, add after line 5 the following:

- 1 (b) SPECIFIC REQUIREMENTS.—The regulations
- 2 under subsection (a) shall include the following:
- 3 (1) A requirement that, not later than 24 hours
- 4 prior to the vote or quorum call involved, the Speak-
- 5 er notify Members that votes may be cast or pres-
- 6 ence may be recorded by designated proxies under
- 7 this resolution.
- 8 (2) The establishment of minimum periods of
- 9 time for the casting of votes and the recording of
- 10 presence by designated proxies under this resolution
- 11 so that such proxies have sufficient time to carry out
- 12 their duties under this resolution, including respond-
- 13 ing to unanticipated votes or quorum calls.
- 14 (3) A requirement for the use of contingency
- 15 plans which may be implemented in the event of the

G:\CMTE\RU\16\PROXMIN5.XML

2

1 failure of any technology used to carry out sections

2 1, 2, or 3.



Mr. COLE. Thank you very much. And I ask the indulgence of the committee.

We are undoubtedly—and you may well be dealing with this, Mr. Chairman, in the guidance that you will be working on, so this may be an issue that we will be talking out at a later date.

But this amendment would simply require that your guidance include three things when it comes to proxy voting: a 24-hour-notice requirement before any proxy vote could be taken; specified minimum voting times, especially for unanticipated votes, to ensure that all proxy votes may be cast; and a contingency plan for proxy voting in the event of technological limitations.

I think those are all things that we ought to be considering anyway, so we would just like to get those as part of the base bill. And, obviously, your guidance would be determinative in how we work through that.

With that, I yield back, Mr. Chairman.

Mrs. TORRES. Can I ask a question?

The CHAIRMAN. The gentlelady from California.

Mrs. TORRES. I know you are presenting on behalf of another member, but I am just wondering if these amendment requests were brought up before the committee—

The CHAIRMAN. This one was.

Mrs. TORRES [continuing]. Got together. And what was the—

Mr. COLE. No, I don't think we got down to that level of detail. There is going to be quite a bit of, you know.

You know, we think we are actually heading into this without a lot of these very basic things having been worked out or thought through. And so these are just three things we think, when it comes to—look, we should all know when proxy voting is being used. We should all know about, you know, the timing on the vote, those sorts of things, any kind of problems technologically, you know, and what are contingency plans for them.

So, again, I suspect these are things that the chairman will be considering as he puts together guidance. I have no doubt he will be consulting with us on those matters as well. And, obviously, he makes the final decision himself, but he has been very forthright in dealing with us openly in these things.

So these are just concerns we have with respect to proxy voting we would like to make sure are answered, whatever the guidance is going to be.

The CHAIRMAN. And I appreciate the gentleman. And I know on a staff level some of these issues were brought up in the committee.

And I think what I could say to the gentleman is that, you know, I can't say that, verbatim, this will all be adopted, but I think some of the spirit of what has been offered here will be in the guidance. And we will share that with the gentleman, you know, hopefully sooner rather than later, certainly before the vote.

But, anyway, you have heard the gentleman's amendment. The vote is now on the Cole amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mr. COLE. Since it wasn't my amendment, I will get a roll call, just out of respect for Mr. Burgess.

The CHAIRMAN. All right. Sure.
 The clerk will call the roll.
 The CLERK. Mr. Hastings?
 [No response.]
 The CLERK. Mrs. Torres?
 Mrs. TORRES. No.
 The CLERK. Mrs. Torres, no.
 Mr. Perlmutter?
 Mr. PERLMUTTER. No.
 The CLERK. Mr. Perlmutter, no.
 Mr. Raskin?
 Mr. RASKIN. No.
 The CLERK. Mr. Raskin, no.
 Ms. Scanlon?
 Ms. SCANLON. No.
 The CLERK. Ms. Scanlon, no.
 Mr. Morelle?
 Mr. MORELLE. No.
 The CLERK. Mr. Morelle, no.
 Ms. Shalala?
 Ms. SHALALA. No.
 The CLERK. Ms. Shalala, no.
 Ms. Matsui?
 Ms. MATSUI. No.
 The CLERK. Ms. Matsui, no.
 Mr. Cole?
 Mr. COLE. Aye.
 The CLERK. Mr. Cole, aye.
 Mr. Woodall?
 Mr. WOODALL. Aye.
 The CLERK. Mr. Woodall, aye.
 Mr. Burgess?
 [No response.]
 The CLERK. Mrs. Lesko?
 Mrs. LESKO. Aye.
 The CLERK. Mrs. Lesko, aye.
 Mr. Chairman?
 The CHAIRMAN. No.
 The CLERK. Mr. Chairman, no.
 The CHAIRMAN. The clerk will report the total.
 The CLERK. Three yeas, eight nays.
 The CHAIRMAN. The amendment is not agreed to.
 Further amendments?
 Mrs. Lesko.
 Mrs. LESKO. Thank you, Mr. Chairman. I have an amendment at the desk.
 The CHAIRMAN. The clerk will report the amendment.
 The CLERK. Amendment No. 14 to House Resolution 965, offered by Mrs. Lesko of Arizona.
 [The amendment of Mrs. Lesko follows:]

AMENDMENT TO H. RES. 895**OFFERED BY M** . _____

Page 4, line 15, strike “10 Members” and insert “2
Members”.



Mrs. LESKO. Thank you, Mr. Chairman.

This amendment would limit the number of proxies that any one Member could carry to two.

And I think there are legitimate reasons for this. First of all, again, I don't like the bill at all, or the resolution, but it is going to pass, so I might as well try to make it better.

And, you know, just from a practical point of view, think about it. Let's say there is an MTR or there is a motion to adjourn or something unexpected and you are carrying 10 proxies. I mean, how are you going to communicate with 10 different people? I just think it is going to cause a problem.

And so that is why I would advocate for a "yes" vote.

The CHAIRMAN. I thank the gentlelady for her amendment.

I will just point out to her that, in our original proposal, we had no limit to how many proxies somebody could carry. The minority leader suggested two. We have come up with 10. That shows, I think, a compromise. But there is no question that voting will take a longer time, no matter how we do it.

And so I think we have moved as much as I think makes sense, and I will urge a "no" vote.

So the vote is now on the Lesko amendment.

Those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Would you like a roll call?

Mrs. LESKO. Yes.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.
 The CLERK. Mr. Woodall, aye.
 Mr. Burgess?
 [No response.]
 The CLERK. Mrs. Lesko?
 Mrs. LESKO. Aye.
 The CLERK. Mrs. Lesko, aye.
 Mr. Chairman?
 The CHAIRMAN. No.
 The CLERK. Mr. Chairman, no.
 The CHAIRMAN. The clerk will report the total.
 The CLERK. Three yeas, eight nays.
 The CHAIRMAN. The amendment is not agreed to.
 Further amendments?
 Mrs. Lesko.
 Mrs. LESKO. Okay. Thank you, Mr. Chairman. I have an amendment at the desk.
 The CHAIRMAN. The clerk will report the amendment.
 The CLERK. Amendment No. 15 to House Resolution 965, offered by Mrs. Lesko of Arizona.
 [The amendment of Mrs. Lesko follows:]

AMENDMENT TO H. RES. _____

OFFERED BY M. _____

Strike section 4.



The CHAIRMAN. If you would.

Mrs. LESKO. Thank you, Mr. Chairman.

My amendment would strike section 4 of the resolution related to remote committee operations. So it would just take out the entire section about remote voting for committees.

The CHAIRMAN. I would urge a “no” vote on this. I don’t think there are any constitutional questions around this. You know, I—anyway, we have had this discussion.

The vote is now on the Lesko amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mrs. LESKO. Roll call.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments?

Mrs. Lesko.

Mrs. LESKO. Thank you, Mr. Chairman. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 16 to House Resolution 965, offered by Mrs. Lesko of Arizona.

[The amendment of Mrs. Lesko follows:]

AMENDMENT TO H. RES. 895
OFFERED BY M. _____

Page 10, strike lines 23 through 25.

Page 11, insert after line 4 the following (and redesignate the succeeding provision accordingly):

1 (i) EXCLUSION OF COMMITTEE ON ETHICS AND
2 COMMITTEE ON INTELLIGENCE.—This section does not
3 apply with respect to the Committee on Ethics or the Per-
4 manent Select Committee on Intelligence.



Mrs. LESKO. Thank you, Mr. Chairman.

This amendment would preclude the Permanent Select Committee on Intelligence and the Ethics Committee from conducting remote operations.

Currently, none of the platforms that can be used to facilitate remote operations can handle classified information. Given that the work of HPSCI fundamentally relies on access to classified information, they should be precluded from undertaking remote operations. Our national security is too important to allow the Intelligence Committee to function remotely.

The Ethics Committee handles serious and sensitive information about Members of Congress and staff constantly. When the Ethics Committee holds a public meeting, it is generally in relation to allegations of improper conduct. The Sixth Amendment provides for an accused person to confront a witness against them. By permitting remote committee operations, we fundamentally deny individuals this right.

I hope that all members can support this amendment, and I yield back.

The CHAIRMAN. Thank you.

I would just point out, already, this prohibits classified briefings in remote format.

We said on the Ethics Committee, which is a bipartisan committee, that if they can figure out a way to operate remotely, they ought to go forward. The idea that all ethics matters would be halted because of this, I mean, if it doesn't have to be, you know, then that is a thing.

But this has to be a bipartisan vote in the Ethics Committee in order for this to—if they can figure out a way to operate remotely, let's give them the opportunity. If they can figure it out, they can; if not, they can't.

Any other—yeah, Mr. Cole.

Mr. COLE. Just quickly, Mr. Chairman, I think this really is an important amendment, because it gets to the point, there are some things you really can't do remotely. And the Intelligence Committee, you know, if it is not talking about sensitive matters, it—

The CHAIRMAN. Well, they are not going to be able to operate.

Mr. COLE. Yeah.

The CHAIRMAN. I mean, that is already there.

And the Ethics Committee, if in a bipartisan way—because it is a truly bipartisan committee—you can figure out a way to operate—

Mr. COLE. Yeah. Again, I just—

The CHAIRMAN. And if you can't, then we don't do it.

Mr. COLE. Well, we will see. This would make sure we didn't walk down that road.

But, with that, yield back.

The CHAIRMAN. Mrs. Lesko.

Mrs. LESKO. Yeah. Thank you, Mr. Chairman. I mean, voting for my amendment doesn't preclude Ethics Committee from not doing their job. It is a small committee. They could certainly meet in person.

And, with that, I yield back.

The CHAIRMAN. Well, we don't know what the future is going to hold. That is the whole reason why we are doing this resolution.

I would just urge a "no" vote.

The vote is now on the Lesko amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mrs. LESKO. Roll call.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments?

Mr. Cole.

Mr. COLE. Thank you very much, Mr. Chairman. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 17 to House Resolution 965, offered by Mr. Cole of Oklahoma.

Mr. COLE. I would ask that the reading be dispensed with.

The CHAIRMAN. Without objection.

[The amendment of Mr. Cole follows:]

☐

Mr. COLE. Thank you very much.

This is actually pretty simple. We would just strike the language to the greatest extent practicable in section 4(a)(2) ensuring the committees must ensure that all members have the ability to—

The CHAIRMAN. That is not the amendment.

Mr. COLE. Oh, I am sorry. I went to my next amendment, so I will go back and stay in order, Mr. Chairman. I apologize for that.

The CHAIRMAN. Okay.

Mr. COLE. This would just simply prohibit proxy voting from counting towards a quorum in committee. I point out that, again, that is something we have never done. We have had proxy votings in the past. We actually had a case in 1966 when the House Committee on Administration attempted to call up a privileged resolution, but a point of order was raised because a quorum was not actually present. So, again, I think we should be careful about this particular thing, and we shouldn't allow proxy votes to be used towards a quorum in a committee.

The CHAIRMAN. I think we have talked about this already, so I would urge a "no" vote. Vote is now on the Cole amendment.

All of those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Are there further amendments? Mr. Cole.

Mr. COLE. Thank you.

Now back to where I was at. I have an amendment at the desk,
Mr. Chairman.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 18 to House Resolution 965, offered
by Mr. Cole of Oklahoma.

Mr. COLE. I would ask that reading be dispensed.

The CHAIRMAN. Without objection.

[The amendment of Mr. Cole follows:]

AMENDMENT TO H. RES. _____

OFFERED BY M. _____

In section 4(a)(2), strike “, to the greatest extent practicable,”.



Mr. COLE. Thank you very much, Mr. Chairman.

Pretty simple. We just strike the language to the greatest extent as practicable in section 4(a)(2), the committees must require all members to have the ability to participate remotely. The whole spirit of the amendment is for more members to be able to participate. So I don't see how you would limit that. Every member on a committee ought to have the ability to participate. It is the responsibility of the institution to provide that. If we are not going to call people back so they could participate here, it seems to me we have to guarantee that wherever they are at, if they are in a remote location. We have a lot of members in States where this is going to be difficult on occasion just given the geography and the lack sometimes of broadband. That may mean setting up hot spots. It may mean moving something to someplace else. It may inconvenience the committee, but there should never be a technical reason for excluding a member from actually participating in a committee hearing.

So I would ask that that language be struck and we make sure that every member have the opportunity to participate from wherever they are at.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. Yeah, the intention is what the gentleman says, but there are circumstances that could arise that, you know, I mean, right now, if your airplane is canceled for whatever reason, your committee hearing is not canceled. So, I mean, I think the spirit is to do what you want, but I think we need to build in a little bit of a safeguard here, so I would urge a "no" vote.

The vote is now on the Cole amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mr. COLE. Roll call.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.
The CLERK. Ms. Matsui, no.
Mr. Cole?
Mr. COLE. Aye.
The CLERK. Mr. Cole, aye.
Mr. Woodall?
Mr. WOODALL. Aye.
The CLERK. Mr. Woodall, aye.
Mr. Burgess?
[No response.]
The CLERK. Mrs. Lesko?
Mrs. LESKO. Aye.
The CLERK. Mrs. Lesko, aye.
Mr. Chairman?
The CHAIRMAN. No.
The CLERK. Mr. Chairman, no.
The CHAIRMAN. The clerk will report the total.
The CLERK. Three yeas, eight nays.
The CHAIRMAN. The amendment is not agreed to.
Further amendments?
Mrs. Lesko.
Mrs. LESKO. Thank you, Mr. Chair. The amendment is at the desk.
The CHAIRMAN. The clerk will report the amendment.
The CLERK. Amendment No. 19 to House Resolution 965, offered by Mrs. Lesko of Arizona.
[The amendment of Mrs. Lesko follows:]

AMENDMENT TO H. RES. 895
OFFERED BY M. _____

In section 4(h), add at the end the following:
 “Under such regulation, the chair of a committee conducting proceedings remotely under this section shall include—

(1) guidance outlining how the committee intends to address specific time zones of members;

(2) guidance of how the committee intends to address technological limitations that may exist that preclude members from full participate in remote sessions;

(3) rules on decorum including attire and how the chair should handle witnesses and members who go over their time limit, and the muting of member microphones; and

(4) how the chair plans to control platform access, including providing the ranking member a list of those with participatory access to the platform 24-hours in advance of the scheduled committee meeting.”.



Mrs. LESKO. Thank you, Mr. Chairman.

This amendment ensures there is guidance regarding a number of limitations within the resolution, including addressing difficulties with difference in time zones. There is a 22-hour difference between American Samoa and Guam, for instance, technological limitations that preclude members from fully participating in remote sessions, decorum rules, including attire, rules for how the chair should handle witnesses and members going over their allotted time, and how chairs plan to control platform access. I guess the bottom line is that there is really—I mean, I know that you say you are going to—somebody is going to provide guidance, but we are voting on this big bill that changes U.S. history, and we don't even know how we are going to do it.

And so, with that, I would encourage a “yes” vote.

The CHAIRMAN. So you said somebody is going to provide guidance. I am going to provide guidance, and many of these issues that you talked about will be addressed. So I will urge a “no” vote.

The vote now is on Lesko amendment.

Those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments? Mrs. Lesko.

Mrs. LESKO. Thank you, Mr. Chairman. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 20 to House Resolution 965, offered by Mrs. Lesko of Arizona.

[The amendment of Mrs. Lesko follows:]

AMENDMENT TO H. RES. 895
OFFERED BY M. _____

Page 8, line 12, strike “amendments,”.

Page 8, strike lines 23 through 25 (and redesignate the succeeding provisions accordingly).

Page 11, insert after line 4 the following (and redesignate the succeeding provision accordingly):

1 (i) MARKUPS.—A committee may not conduct mark-
2 ups remotely.



Mrs. LESKO. Thank you, Mr. Chairman.

My amendment would ensure that, during this period of remote committee work and proxy voting, that no remote markups are held. I think it is important that we take this in baby steps, and we could see how it works without markups. I think, obviously, markups in voting and committee are very important, and I would encourage a "yes" vote.

The CHAIRMAN. I would oppose this. I am getting confused because, a few minutes ago, we were told we shouldn't be taking bills to the floor that weren't marked up, didn't have hearings and markups. Now we are saying we don't want to allow markups. Anyway, I would urge a "no" vote.

Vote now is on the——

Mr. WOODALL. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Woodall.

Mr. WOODALL. In case it affects your vote——

The CHAIRMAN. It won't.

Mr. WOODALL [continuing]. The consistency there is that what we are saying is we should be here doing our work in both cases is what that is.

The CHAIRMAN. All right.

The vote is on the Lesko amendment.

Those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mrs. LESKO. Roll call.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.
 The CLERK. Mr. Woodall, aye.
 Mr. Burgess?
 [No response.]
 The CLERK. Mrs. Lesko?
 Mrs. LESKO. Aye.
 The CLERK. Mrs. Lesko, aye.
 Mr. Chairman?
 The CHAIRMAN. No.
 The CLERK. Mr. Chairman, no.
 The CHAIRMAN. The clerk will report the total.
 The CLERK. Three ayes, eight nays.
 The CHAIRMAN. The amendment is not agreed to.
 Are there further amendments?
 Mrs. Lesko.
 Mrs. LESKO. Thank you, Mr. Chairman.
 I have an amendment at the desk.
 The CHAIRMAN. The clerk will report the amendment.
 The CLERK. Amendment No. 21 to House Resolution 965, offered
 by Mrs. Lesko of Arizona.
 [The amendment of Mrs. Lesko follows:]

AMENDMENT TO H. RES. 895**OFFERED BY M**__ . _____

Page 11, insert after line 4 the following (and redesignate the succeeding provision accordingly):

- 1 (i) DEPOSITIONS.—A committee may not take deposi-
2 tions remotely.



Mrs. LESKO. Thank you, Mr. Chairman.

My amendment would ensure that, during this period of remote committee work and proxy voting that no remote depositions are to occur. This is a simple amendment aimed to protect the right to counsel. It is of the utmost importance during a deposition that those being questioned have the right to counsel readily available, and that becomes much more complicated in a remote setting. We must really look to protect the right and due process during a deposition, and it is hard to square that with the reality of a remote Congress as committees conduct virtual business.

In addition to this, given that some committees do not require a member to be present, this could also result in remote staff-only depositions.

I hope that all members can support this amendment, and I yield back.

The CHAIRMAN. Yeah, I would strongly oppose it. I mean, in the real world, depositions are conducted remotely, and I don't think we should do anything to frustrate our constitutional responsibility to do oversight.

Mr. Perlmutter.

Mr. PERLMUTTER. Yes, depositions have been taken remotely for 20 or 30 years at least, and evidence being presented to our courts remotely right now, State and Federal. So I am not sure what lawyer is advising you on this one, but they are wrong.

I yield back.

The CHAIRMAN. Per the gentlelady's amendment, all those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mrs. LESKO. Roll call.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three ayes, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments?

Mr. Cole.

Mr. COLE. Thank you very much, Mr. Chairman. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 22 to House Resolution 965 offered by Mr. Cole of Oklahoma.

Mr. COLE. I ask that the reading be dispensed with.

The CHAIRMAN. Without objection.

[The amendment of Mr. Cole follows:]

AMENDMENT TO H. RES. _____**OFFERED BY M. _____**

Add at the end of section 4 the following new subsection:

1 (d) POINT OF ORDER AGAINST CONSIDERATION OF
2 LEGISLATION REPORTED IN VIOLATION OF RULES.—

3 (1) EFFECT OF POINT OF ORDER.—It shall not
4 be in order to consider in the House a bill or joint
5 resolution reported by a committee under any re-
6 mote proceeding authorized under this section if, in
7 marking up or reporting the bill or joint resolution,
8 the Committee violated any Rule of the House, any
9 rule of the committee, or any provision of this reso-
10 lution.

11 (2) DISPOSITION.—It shall not be in order to
12 consider a rule or order that waives the application
13 of this subsection. As disposition of a point of order
14 under this subsection, the Chair shall put the ques-
15 tion of consideration with respect to the rule or
16 order, as applicable. The question of consideration
17 shall be debatable for 10 minutes by the Member
18 initiating the point of order and for 10 minutes by
19 an opponent, but shall otherwise be decided without

G:\CMTE\RU\16\PROXMIN33.XML

2

1 intervening motion except one that the House ad-
2 journ.



Mr. COLE. Thank you very much, Mr. Chairman.

Mr. Chairman, this would simply create a point of order against consideration of legislation that violates House or Committee rules, and it would prevent the Committee on Rules from waiving a point of order. All this would do is ensure that, obviously, a point of order that is legal under the rules would actually reach the floor to be fully considered. So this is a protection since we are, obviously, embarking into unknown territory with new methods, new procedures that haven't been used ever in this House before, which simply allow members to bring their case, if you will, beyond the Rules Committee where decision is apt to be automatic to the full body to make a decision.

The CHAIRMAN. Well, I would oppose this again. I mean, we waive the rules prophylactically all the time, as my friends did when they were in the majority. And, again, I think these are attempts to, obviously, frustrate our ability to move forward on legislation. And I would urge a "no" vote.

Mr. COLE. If I may, Mr. Chairman.

The CHAIRMAN. Yes.

Mr. COLE. When we were in the majority, we never embarked on anything like this, but I understand the circumstances are different.

The CHAIRMAN. Even in this committee right now, we are violating the 5-minute rule.

Mr. COLE. Yeah. Well, we have routinely done that for a long time.

The CHAIRMAN. I know we have—

Mr. COLE [continuing]. Be the first person to agree with you on that. But, in this case, this is an unchartered expansion of the rules. This is way beyond anything we have ever done before. So it simply makes sure—you still control the body. If you control the Rules Committee, you control the body. So you are still going to win the point of order, but it allows—if somebody feels like it is a flagrant violation, it at least allows them to get a hearing in front of the body. That's all.

The CHAIRMAN. The vote is on the Cole amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?
 Mr. MORELLE. No.
 The CLERK. Mr. Morelle, no.
 Ms. Shalala?
 Ms. SHALALA. No.
 The CLERK. Ms. Shalala, no.
 Ms. Matsui?
 Ms. MATSUI. No.
 The CLERK. Ms. Matsui, no.
 Mr. Cole?
 Mr. COLE. Aye.
 The CLERK. Mr. Cole, aye.
 Mr. Woodall?
 Mr. WOODALL. Aye.
 The CLERK. Mr. Woodall, aye.
 Mr. Burgess?
 [No response.]
 The CLERK. Mrs. Lesko?
 Mrs. LESKO. Aye.
 The CLERK. Mrs. Lesko, aye.
 Mr. Chairman?
 The CHAIRMAN. No.
 The CLERK. Mr. Chairman, no.
 The CHAIRMAN. The clerk will report the total.
 The CLERK. Three ayes, eight nays.
 The CHAIRMAN. The amendment is not agreed to.
 Further amendments?
 Mr. Cole.
 Mr. COLE. Thank you very much, Mr. Chairman. I have an amendment at the desk.
 The CHAIRMAN. The clerk will report the amendment.
 The CLERK. Amendment No. 23 to House Resolution 965, offered by Mr. Cole of Oklahoma.
 Mr. COLE. I ask the reading be dispensed with.
 The CHAIRMAN. Without objection.
 [The amendment of Mr. Cole follows:]

AMENDMENT TO H. RES. 895**OFFERED BY M** . _____

In section 4(h), add at the end the following:

“Under such regulations, before any committee may conduct proceedings under this section, the chair of such committee shall publish guidance in the Congressional Record on how the chair intends to authenticate and validate member participation.”.



Mr. COLE. Thank you very much, Mr. Chairman.

This would simply require that the guidance include how the committee plans to authenticate and validate member participation. Obviously, you haven't made that decision yet, but we want to make sure it is—it is not in the bill or in the resolution. So we want to make sure that this is one of the things you actually consider, that we actually get an authentication and validation of member participation.

The CHAIRMAN. Yeah, I mean, I will ensure the gentleman of the guidance that there will be language so that you will be able—so that you can verify that someone is who they say they are. So it will be in the guidance. So I would urge a “no” vote on this because it will be in the guidance.

Mr. COLE. Well, just—and I know it will be, Mr. Chairman, I just want to say that. We are just using this opportunity to point those things out to make sure that, when you review the record of this hearing, as I know you will, that that is one of the things that you consider—

The CHAIRMAN. The vote is now on the Cole amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Roll call?

Mr. COLE. Yes, please, Mr. Chairman.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments?

Mr. Woodall.

Mr. WOODALL. Thank you, Mr. Chairman. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 24 to House Resolution 965, offered by Mr. Woodall of Georgia.

[The amendment of Mr. Woodall follows:]

☒

Mr. WOODALL. Mr. Chairman, this is an amendment to ensure that, in the guidance that you provide, that a member's right to offer a motion to adjourn and a motion to postpone is preserved. Again, it is an unprecedented new process, unprecedented amount of authority placed solely in your hands to draft entire process. And so my hope is that you could tell me today whether or not the guidance does include that guarantee of each individual member's offer to make the motion to adjourn and the motion to postpone as the rules today provide.

The CHAIRMAN. Well, the rules are still the rules, and they will not be denied. So I don't—this is unnecessary, but the vote is on the—

Mr. WOODALL. Mr. Chairman, just because I asked the question in sincerity about whether or not you intended to include it in the guidance, the reason you saw everybody reaching over my shoulder—

The CHAIRMAN. There will be nothing in the guidance to prevent members from making motions to adjourn or any other motions that they have the ability to do as stipulated by the rules that are in place right now.

Mr. WOODALL. And so, when the implementing legislation says "notwithstanding any other rules of the House," this is where we are going. I think that is the part that gives us pause. If what instead the legislation said is "maintaining all of the current rules of the House," this is where we are going, I would have a completely different set of amendments.

The CHAIRMAN. Yeah, I would just assure the gentleman that we are protecting minority rights; but if he wants a vote on this to make an exclamation point, I am happy to—

Mr. WOODALL. Well, again, I would settle for the chairman's commitment. It says in section 4, I am not—

The CHAIRMAN. You have my commitment.

Mr. WOODALL. During any covered period and notwithstanding any rule of the House or its committees, here is this new process that Chairman McGovern will lay out in his sole discretion.

The CHAIRMAN. I guess the issue is, if you would like us to go on and restate every single thing a member can currently do, the chances of us leaving something out would probably be greater than for—I mean, whatever. If the gentleman wants—let's have a vote on your amendment.

Mr. WOODALL. Well, and I have got several. It sounds petty when you say it, and I know you are not trying to demean the amendment.

The CHAIRMAN. No. That wouldn't be fitting, no.

Mr. WOODALL. But these are the minority rights that you were talking with Mr. Hoyer about and, yes, having those in a process that is likely to suppress a minority, having minority rights specifically—

The CHAIRMAN. Well, I disagree with the gentleman's assessment of what we are trying to do. But, in any event, he has made his point, and I would urge a "no" vote.

So the vote is now on the Woodall amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.
 Mr. WOODALL. Roll call, please.
 The CHAIRMAN. The clerk will call the role.
 The CLERK. Mr. Hastings?
 [No response.]
 The CLERK. Mrs. Torres?
 Mrs. TORRES. No.
 The CLERK. Mrs. Torres, no.
 Mr. Perlmutter?
 Mr. PERLMUTTER. No.
 The CLERK. Mr. Perlmutter, no.
 Mr. Raskin?
 Mr. RASKIN. No.
 The CLERK. Mr. Raskin, no.
 Ms. Scanlon?
 Ms. SCANLON. No.
 The CLERK. Ms. Scanlon, no.
 Mr. Morelle?
 Mr. MORELLE. No.
 The CLERK. Mr. Morelle, no.
 Ms. Shalala?
 Ms. SHALALA. No.
 The CLERK. Ms. Shalala, no.
 Ms. Matsui?
 Ms. MATSUI. No.
 The CLERK. Ms. Matsui, no.
 Mr. Cole?
 Mr. COLE. Aye.
 The CLERK. Mr. Cole, aye.
 Mr. Woodall?
 Mr. WOODALL. Aye.
 The CLERK. Mr. Woodall, aye.
 Mr. Burgess?
 [No response.]
 The CLERK. Mrs. Lesko?
 Mrs. LESKO. Aye.
 The CLERK. Mrs. Lesko, aye.
 Mr. Chairman?
 The CHAIRMAN. No.
 The CLERK. Mr. Chairman, no.
 The CHAIRMAN. The clerk report the total.
 The CLERK. Three yeas, eight nays.
 The CHAIRMAN. The amendment is not agreed to.
 Further amendments?
 Mr. Woodall.
 Mr. WOODALL. Thank you, Mr. Chairman. I have an amendment
 at the desk.
 The CHAIRMAN. The clerk report the amendment.
 The CLERK. Amendment No. 25 to House Resolution 965, offered
 by Mr. Woodall of Georgia.
 [The amendment of Mr. Woodall follows:]

☒

Mr. WOODALL. Mr. Chairman, this is an amendment to ensure the right of a member to have a member's words be taken down, be included. To Mr. Perlmutter's point earlier, I know things have evolved in the 3 weeks since the last package that was discussed, but in the last package, it specifically stipulated that all current House rules would be followed. This package specifically says, notwithstanding any House rules, we are going to do things differently.

I know the gentleman does not have a partisan goal, but I think it is not only appropriate, but it is the responsibility of the minority when the legislation has changed from "we will protect all of House procedures" to "notwithstanding any House procedures," that we try to provide some definition where definition is lacking.

The CHAIRMAN. Yeah. Again, I don't think it is practicable to restate every single right in the rules, but I will assure the gentleman that if he and I are debating an issue and I personally attack him or besmirch his character, he will have the right to take my words down.

Mr. WOODALL. I know that circumstance would never happen, Mr. Chairman.

The CHAIRMAN. We're speaking hypothetically here. I would never do that.

Mr. WOODALL. But we have all experienced this on the video calls that we are on. Folks are raising their hand. They are trying to talk over each other. It is very difficult for the chairman to run a virtual committee meeting as we found in our very small committee talking over one another and in limited space. So I will concede that the chairman is absolutely right, we cannot possibly list every minority right. If the chairman would agree with me that we will include these six that I am mentioning, we can be done with it.

Mr. RASKIN. Mr. Chairman.

The CHAIRMAN. I think if we include these six and don't include others, then we are basically making it possible for those others to be violated.

Mr. Raskin.

Mr. RASKIN. I was going to make precisely that point, Mr. Chairman. The omission of other rights when you are starting, beginning to enumerate rights implies that those other ones are not included in the production; thus, the existence of the Ninth Amendment to the Constitution and the Bill of Rights. I don't think we need to reenact the entire constitutional history of the United States here when we have a very simple delegation of power to the chairs of the committees to operate consistent with all of the laws of the United States and the rules of the House of Representatives.

Mr. WOODALL. If that is what we had, you would be exactly right, and that is what we had 3 weeks ago. Today, we have the opposite. We have "during any covered period and notwithstanding any rule of the House." We do not have a document that says please comply with all of the rules. We have a document that says you are empowered to ignore all of the rules, to the gentleman's point.

Mr. RASKIN. Then we are just reading that differently. That clause, to my understanding, means that we can go ahead and op-

erate according to the new rules, meaning at distance, technologically, which you couldn't otherwise do.

Mr. WOODALL. The new rules being whatever Chairman McGovern drafts as guidance and shares with us whenever he decides to share—

Mr. RASKIN. Are you telling me that you think that the import of our new rule would be essentially what Donald Trump thinks is the meaning of Article II, that we can do whatever we want, inconsistent with the rules of the House and the Constitution.

Mr. WOODALL. I don't take the gentleman's reference. I simply note, from my very limited legal understanding, that "notwithstanding any rule of the House" means notwithstanding any rule of the House. I am not trying to read anything into it. You changed the language from "incorporating every rule of the House" to "notwithstanding any rule of the House." I don't know why you did it. I am sure it wasn't nefarious. I just want to make sure that minority rights are not trampled upon, and next Congress when Republicans are in control, you will thank me for having protected minority rights in this way.

The CHAIRMAN. Let me, if I could, let me assure the gentleman that minority rights will be protected and that I think, we can—let's just vote on the gentleman's amendment because I think we are just talking in circles now.

The vote is now on the Woodall amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter.

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?
Mr. WOODALL. Aye.
The CLERK. Mr. Woodall, aye.
Mr. Burgess?
[No response.]
The CLERK. Mrs. Lesko?
Mrs. LESKO. Aye.
The CLERK. Mrs. Lesko, aye.
Mr. Chairman?
The CHAIRMAN. No.
The CLERK. Mr. Chairman, no.
The CHAIRMAN. The clerk report the total.
The CLERK. Three yeas, seven nays.
The CHAIRMAN. The amendment is not agreed to.
Further amendments?
Mr. Woodall.
Mr. WOODALL. Mr. Chairman, I have an amendment at the desk.
The CHAIRMAN. The clerk will report the amendment.
The CLERK. Amendment No. 26 to House Resolution 965, offered
by Mr. Woodall of Georgia.
[The amendment of Woodall follows:]

☒

Mr. WOODALL. Mr. Chairman, again, I don't dispute the very generous way that you have led this committee, but the ranking member introduced letters from other committee ranking members who have not had that same experience with their chairman, which is why amendment No. 26 says that the guidance should include the right to ensure 7-day notice before the hearing and that the guidance should preserve the right to ensure 24-hour availability of text. I don't know how chairmen will use their power. I know chairmen use their power very differently today than they did 30 years ago, and I think that is to the credit of this institution that that is true. But the remote nature of a committee hearing or a committee markup should not change the character of that. It could be argued that, without being in the room with the committee staff, with personal office staff, or expert witnesses that folks need even more time to prepare for hearings, not less.

And so this, again, provides those very limited guarantees that many of our ranking members have already said have been denied to them.

The CHAIRMAN. All right. Well, first of all, we haven't had any remote hearings yet. I mean, we have to change the rules in order to do that. So, when people say that, you know, these hearing rules have been violated, we haven't been able to do that yet. But I assure the gentleman all of these rules will continue to be complied with and chairs will have to follow them, period.

So the vote is now on the gentleman's amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mr. WOODALL. Roll call, please, Mr. Chairman.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

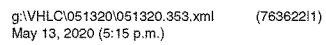
Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.
The CLERK. Mr. Cole, aye.
Mr. Woodall?
Mr. WOODALL. Aye.
The CLERK. Mr. Woodall, aye.
Mr. Burgess?
[No response.]
The CLERK. Mrs. Lesko?
Mrs. LESKO. Aye.
The CLERK. Mrs. Lesko, aye.
Mr. Chairman?
The CHAIRMAN. No.
The CLERK. Mr. Chairman, no.
The CHAIRMAN. The clerk report the total.
The CLERK. Three yeas, eight nays.
The CHAIRMAN. The amendment is not agreed to.
Further amendments?
Mr. Woodall.
Mr. WOODALL. Mr. Chairman, I have an amendment at the desk.
The CHAIRMAN. The clerk will read the amendment.
The CLERK. Amendment No. 27 to House Resolution 965, offered
by Mr. Woodall of Georgia.
[The amendment of Mr. Woodall follows:]

In section 4(h), add at the end the following: “Under such regulation, the chair of a committee conducting proceedings remotely under this section shall ensure that members of the committee shall have the right to offer motions to appeal the ruling of the chair.”.



Mr. WOODALL. Again, Mr. Chairman, this amendment would ensure that the guidance includes the right to offer motion to appeal the ruling of the chair. I take Mr. Raskin's point that, if we list a number of powers and do not include others, that can be deceptive in a limiting nature. So I would be willing to accept, if it would win your support, a friendly amendment that would add "including but not limited to the following minority rights," including the right to appeal the ruling of the chair. It is going to be very difficult to go through these parliamentary processes that are already difficult for members who are not parliamentary experts when we all sit together and are surrounded by a talented cadre of staff. Trying to do this from your den without the likes of a Kelly or a Dawn sitting beside you is only going to make it harder, and that is why I would like to make sure that the guidance includes these items.

The CHAIRMAN. Members will have the right to appeal the ruling of the chair. So I think this is unnecessary, but let's have a vote.

The vote is on the gentleman's amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments?

Mr. Woodall.

Mr. WOODALL. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 28 to House Resolution 965, offered
by Mr. Woodall of Georgia.

[The amendment of Mr. Woodall follows:]

☐

Mr. WOODALL. Mr. Chairman, as you will remember, I misspoke earlier when I was talking to the majority leader, and he corrected me. This amendment would respond to that conversation by ensuring that the guidance does not require the pre-filing of amendments and that the guidance will preserve the right to offer second-degree amendments. We see it in this committee as much as any, where when we have a chance to talk about something together, we can end up with a better solution than what we had to begin with. I don't want the stilted nature of a—or even the expedited nature of a remote committee process to undermine either of these important collegial functions.

The CHAIRMAN. Well, as the majority leader stated and as I stated as well, there will be no pre-filing requirement. I mean, some had suggested that because they thought it would actually make for more orderly hearings if they had to be done remotely. It probably would. But that will not be part of this, and that is that.

So there is no need for this, and I would urge a “no” vote.

Mr. MORELLE. Mr. Chair.

The CHAIRMAN. Yes, Mr. Morelle.

Mr. MORELLE. And I just might suggest, because I think you are being too modest, I think these kind of protections which you personally made sure exist I think ought to be acknowledged. I mean, think to Mr. Woodall's amendment, I agree with the spirit of it, but it is already in what we have done, and the chair has not only indicated that will be the case, the majority leader has indicated that will be the case. But I wanted to acknowledge the chair's good work in making sure that we continue to operate even if it is by remote process in the same spirit and in the same letter of the current rules.

So I just want to acknowledge your work, Mr. Chairman.

The CHAIRMAN. Well, I appreciate that, and let me just say, you know, I think there will be some in this Chamber, not all, but some who will try to find ways to intentionally make this process much more difficult than it needs to be. And so it was attractive for some to try to figure out ways to limit that, but we are not going to, all right. So we are just going to all get through this together, and, again, we are not limiting your ability to do second-degree amendments nor are we requiring that all amendments have to be pre-filed.

So, you know, we will get through this. But this is not necessary, but we will go on anyway.

Mr. WOODALL. If the Chairman would—I don't disagree with a thing that Mr. Morelle said about the power of your leadership. But we had a choice—and I say “we” loosely. You had a choice when you drafted this language. We could have decided on this guidance together. This is a matter of original jurisdiction. Our committee gets to make these decisions. But, instead, the language you drafted says. “Pass it first, and then I will decide later how it is going to work.”

The CHAIRMAN. We will——

Mr. WOODALL. No one——

The CHAIRMAN. I told Mr. Cole earlier today that we will share with him the guidance before—it will be public. It is going to be before the vote.

Mr. WOODALL. I understand that.

The CHAIRMAN. And if the gentleman wants to now require that there be a pre-filing amendment, we can entertain that as well.

Mr. WOODALL. The gentleman has a—we have a committee that could have a minority voice as we crafted this. The very first step in creating remote committee jurisdictions is to say in fact the minority members won't be voting on any of these things, we won't as a committee sit on any of these things, we are going to delegate the entire process to the Rules Committee chairman. There is no better chairman than you to delegate that to. I am not denigrating your leadership at all. What I am saying is the first step out of the box is to say we won't do this collectively; we are going to do it in a unified way as if we had given you all of our proxies, and you had decided to write these rules. And this is the nature of our concern. It is not a faux concern. It is a very real concern, and we are living it out right now.

Mr. PERLMUTTER. Mr. Chair.

The CHAIRMAN. Well, the gentleman has asked that we not have a pre-filing requirement. I would urge the gentleman to take yes for an answer, but everything—I kind of see what's happening here. This is—we are going through this procedure here, which is perfectly fine, and no matter if the answer is yes, it is still not the answer that the gentleman wants.

I yield to the gentleman from Colorado.

Mr. PERLMUTTER. And I guess what is bothering me here is every one of these motions, every one of these amendments, every argument that was made by the five or six gentlemen that came in is almost ignoring the fact we are in a pandemic. We are not in a regular order system, and we have got to do the best we can. And the gentleman who has worked with you and worked with Mr. Cole has said he will get this guidance and he will visit with you, and he keeps saying this. I mean, we will be here all night, and that is fine, I don't care.

But America is undergoing something it hasn't experienced in at least a hundred years, and the size of the economic fallout of this is beyond belief. And what we are trying to do, Mr. Woodall, is to keep this government running in any kind of a way to address so many emergencies that exist out there right now. Do you think I want to be wearing this neck gaiter and choking on some of my words? I mean, I don't like what we see here. And the language—and Mr.—you know from your law school days, as do I, you know, if you exclude something in one way and you don't exclude it in another way, the courts are going to draw conclusions from that. And what—I just want to have you—you can bring up every single section of the rules because of his use of the word “notwithstanding.” And if we want to be here all night, I mean it reminds me of narrow fiddling while Rome is burning.

You know, we have got work to do. This is a way to start getting it done. I know Mr. Cole wants to get on to normal appropriations. There is a lot of work to be done. There is a lot of work for us to have to conduct long before this damn virus hit us all, and we have got to get this done. And I appreciate the minority wanting to, you know, make it as difficult as possible, you know, and maybe run out the clock through the end of December. I don't think that is

what you want to do. But I will tell you, after 28 or 29 of these amendments, I can see that coming. And America will suffer for it.

That is all I can say, and I yield back.

Mr. WOODALL. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Woodall.

Mr. WOODALL. Thank you, Mr. Chairman, and I do appreciate your indulgence.

And I know my friend from Colorado was not suggesting that I am here in a dilatory capacity and that my sincerity—I know he was not questioning my sincerity in any way, shape, or form.

Mr. Raskin went down that same line of, I would argue, policy shaming for folks who aren't focused on other issues. We all like to think that we are a committee of jurisdiction, that we are in charge of getting those healthcare dollars out the door, but that is not our job. We like to think we are in charge of making sure that our first responders have PPE, but that is not our job on this committee. We like to think that we get to go out and assist our first responders with equipment. That is not our job on this committee. Our job on this committee is the rules of the House, and what you are proposing today is changing the rules of the House in a profound way, a profound way, and for members who are concerned that folks are likely to use a crisis that we all agree is a crisis, likely to use human suffering, which we all agree is tragic human suffering, as an excuse to drive their will over the minority. So for the Rules Committee hearing on May 14th, when folks say those minority guys, they are just trying to delay it. Those minority guys, their ideas aren't even sincere. Those minority guys, they are focused on the minutia when they ought to be focused on the big picture.

We are a process committee. We focus on the minutia because if we don't get the minutia right, the process falls apart. We don't even need a Rules Committee. You know that. We can operate this entire House without a Rules Committee at all. We have a Rules Committee to deal with the problems that the regular process doesn't solve. Perhaps creating a brandnew way to hold committee hearings after 200 years, perhaps responding to a crisis of unprecedented proportions, perhaps that merits a conversation. And I think it is wonderful that, after the chairman crafts the guidance, where the Rules Committee tells other committees how to conduct their business for, again, the first time because committees usually vote on their own rules—we will be telling those committees how to do their rules—I think it is wonderful that Chairman McGovern is going to come and consult with Mr. Cole after the fact, but there is not a single member on this committee who questions the value that Mr. Cole provides here. There is not a single member on this committee who questions Mr. Cole's wisdom as it comes to how we can operate in a collaborative bipartisan way. And so there is not a member on this committee who doesn't think it is a waste of our collective resources to come to him after the fact when the cake is baked instead of before the fact when we are mixing up the ingredients to begin with.

The CHAIRMAN. Let me, if I could—may I respond just briefly? Let me just say one thing. I mean, we don't agree on what we are doing here. I mean, that is clear. You know, we—but I will disagree

with the gentleman on a couple of things. One is it is our job to make sure we get money to first responders. It is our job to make sure that we get healthcare dollars out. We are the committee that brings these bills to the floor so that, in fact, we can move this stuff forward. So let's not—I mean, the idea that it is just not—the process is policy as well.

Secondly, you know, I mean, I—you know, we didn't come to an agreement in the bipartisan committee, but I think that it is not because we weren't exchanging ideas or I wasn't listening to Mr. Cole or he wasn't listening to me. It is just that we just couldn't come to an agreement. And so the idea that somehow this is a big surprise that we are here right now and that there has been no consultation and no back and forth, I respect Mr. Cole. I can disagree with his conclusion here today. I think we need to do this to be able to help our first responders and get healthcare dollars out. But, I mean, the implication that somehow we don't value—I don't value his opinion or his guidance, I do. You know, on a lot of things, we do agree and we work things out.

So I just want the record to reflect that and that the work that this committee does is not just about, you know, crossing t's and putting dots on i's. It is about making sure that this place functions in a way that we can get the monies and the relief to people in this crisis who need it. So I get it. And I don't question anybody's motives here. I think we need to move on. We have to deal with our HEROES package, we have to listen to that as well. So let us, if we could, we could maybe kind of move on and take a vote.

Mr. Cole.

Mr. COLE. Just quickly, Mr. Chairman.

First of all, I doubt the wisdom of consulting me all the time. So I appreciate your kind words and my friend's kind words.

But I also want to say a couple of things just in response to what you said. And, number one, I thought the ad hoc committee did really good work, and I thought we actually moved closer in the course of our discussions. You certainly accepted a number of the suggestions that we made, and I appreciate that. Others, you know, we probably started out on our side where we were not in favor of remote hearings at all. We accepted them to everything other than the markup. We were not in favor of proxy votes at all. We eventually accepted them with the idea of concurrence and a lower number. You moved toward us on that number. So, look, I think the whole exercise was a good one, and I think it actually eased the work here today.

So all we are trying to do, we have a lot of questions our members want to ask. We have to go back and defend this process to them.

The CHAIRMAN. I appreciate that.

Mr. COLE. And I think that is what Mr. Woodall is trying to do. But, please, don't think for a minute that any of us doubt your fairness, because we don't, or that any of us think that you have not been forthright with us and inclusive, because you have.

The CHAIRMAN. I appreciate that.

Mr. COLE. I yield back.

The CHAIRMAN. All right.

The vote is on the Woodall amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Would you like a roll call vote?

Mr. WOODALL. Please, Mr. Chairman.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Before I go to next to the amendment, let me ask unanimous consent to insert into the record a statement by Representative Stephen Cohen in support of the resolution.

[The information follows:]

**Statement to the Committee on Rules in Support of Remote Voting by Proxy
and Remote Committee Proceedings
*Congressman Steve Cohen (TN-09)***

Chairman McGovern, Ranking Member Cole, and members of this distinguished committee, Thank you for allowing me to submit a statement in support of H.Res.965 which allows for the House to temporarily implement remote committee proceedings and remote voting by proxy. Our constituents elected us to come together and solve problems for the nation. However, right now, physically coming together poses a risk to health and safety. These are unprecedented times that demand we develop creative solutions so we may effectively, efficiently and safely represent our constituents.

COVID-19 is spread from person to person through respiratory droplets, our coughs, our sneezes, and sometimes even our breath. The CDC recommends at least six feet of distance between individuals to prevent the spread. It is impossible to maintain a six feet distance on the House Floor when all members are present. This presents a unique challenge that needs to be addressed so we can continue our work on behalf of the American people.

Beyond that, members coming to the House Floor could have a multiplier effect. We travel from points across the country to come to Washington and then return to our districts. During our trips, we could be exposed to and/or spread the Coronavirus to flight attendants, pilots and those that work at airports. When in the Capitol complex, we interact with Capitol Police Officers, food service workers, clerks, sanitation and maintenance workers, not to mention our staff who work in very tight quarters. Every time we come to Washington, we put them at risk, and they in turn may put their families and communities at risk.

Remote voting by proxy is a creative solution to the challenges we face and one that preserves the integrity of our voting system. We can still represent our constituents while minimizing threats to the health and safety of ourselves and others. We need to be able to vote on vital issues to help people stay at home, keep their homes, put food on the table, and test, test, test.

I am also pleased that the resolution allows Committees to hold virtual hearings, markups and depositions so that Congress can continue to conduct our oversight duties remotely. This resolution importantly also directs the Committee on House Administration to look at the use of technology to further facilitate remote voting.

We don't know when this pandemic will end, but it is our duty to the American people who elected us to represent their interests with our votes and we must remain healthy ourselves to do that. Voting by proxy is currently the best solution to our ever developing situation which preserves voting integrity and ensures we can continue to conduct the business of the House.

The CHAIRMAN. Further amendments?

Mr. Cole—wait a minute. Mr. Who?

Mr. WOODALL. I had an amendment designated as No. 12, Mr. Chairman, but I was not going to offer that amendment. Withdraw it.

The CHAIRMAN. Thank you.

Further amendments?

Mr. WOODALL. If I could.

The CHAIRMAN. Sure.

Mr. WOODALL. Just so the committee is clear, we talked a lot about your consultation with the ranking member, and my amendment was to codify that to say that you would, in fact, consult with the ranking member because that was nowhere to be found. But based on your statements that you have been and you will be and you will continue to be, to your point, there is no need to vote on that because you have already given us your word, which gives me great confidence so I withdraw the amendment.

The CHAIRMAN. Further amendments? Mr. Cole.

Mr. COLE. Thank you very much, Mr. Chairman.

This again is a Burgess amendment. So bear with me a little amendment. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 29 to House Resolution 965, offered by Mr. Cole of Oklahoma.

[The amendment of Mr. Cole follows:]

AMENDMENT TO H. RES. _____**OFFERED BY M. _____**

Add at the end of section 4 the following new sub-
section:

1 (d) REQUIRING USE OF PRODUCTS AND SERVICES
2 APPROVED BY CHIEF ADMINISTRATIVE OFFICER.—A
3 committee may not use any product or service to conduct
4 remote proceedings under this section unless the use of
5 such product or service for that purpose has been ap-
6 proved by the Chief Administrative Officer of the House
7 of Representatives.



Mr. COLE. And I would ask that the reading be dispensed with.

The CHAIRMAN. Without objection.

Mr. COLE. Thank you very much.

Again, as I noted, Mr. Chairman, this is an amendment by our esteemed colleague, Mr. Burgess. It simply asks that only CAO-authorized products be used to conduct the operations of our committees when we are operating remotely. I think that is something that you want to do as well, but we are just trying to get it nailed down so that we know the source of any technology that we need to use. That is a pretty important thing and particularly given the number of times that people try to hack into various House, you know, proceedings as it is, so——

The CHAIRMAN. And we are going to basically—it is a very good idea. We are going to end up taking it—I think we are going to change the word “approved” to “certified.”

Mr. COLE. That is more than generous, Mr. Chairman. Thank you very much.

The CHAIRMAN. But no on the amendment because we are going to do it.

Mr. COLE. Gee.

The CHAIRMAN. We are giving you what you want.

Mr. COLE. No, no, I tell you what, on that basis——

The CHAIRMAN. Tell Burgess he won.

Mr. COLE. Well, he won't look at it quite that way.

The CHAIRMAN. Anyway, the vote is on the Cole amendment.

All those in favor, say aye.

Opposed, No.

In the opinion of the chair, the noes have it.

Mr. COLE. We will leave it up to voice vote on your assurances.

The CHAIRMAN. Further amendments?

Mrs. Lesko.

Mrs. LESKO. Thank you, Mr. Chairman. I have an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 30 to House Resolution 965, offered by Mrs. Lesko of Arizona.

[The amendment of Mrs. Lesko follows:]

AMENDMENT TO H. RES. 895**OFFERED BY M**

Page 8, line 11, strike the semicolon and insert the following: “, and not later than 24 hours after declaring a recess under this paragraph, the chair shall notify the members of the committee of the circumstances which required the recess to be declared;”.



Mrs. LESKO. Thank you, Mr. Chairman.

My amendment would require that, within 24 hours of using the authority to recess committee operations for technical reasons, the chair must notify all members about the circumstances related to the recess. We agree that the chair should have the right to immediately recess committee operations for technical issues, but there should be a mandatory followup promptly sent to all committee members clarifying the reason for the recess.

And, with that, I yield back.

The CHAIRMAN. Let us think about this. I don't—I am going to urge a "no" vote right now, but—

Mr. COLE. Do you want us to set it aside while you look at it for a second, and we move through the rest of them?

The CHAIRMAN. Yes, I think we need to consult with a few—it is going to take more than 10 seconds to go through this, but let us—why don't we have a vote. But if we can try and take care of this in the guidelines, we will. But why don't we—do you want to vote on this? I would urge a "no" vote so we could consult.

But all of those in favor of the Lesko amendment, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mrs. LESKO. Roll call.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.
 The CLERK. Mrs. Lesko, aye.
 Mr. Chairman?
 The CHAIRMAN. No.
 The CLERK. Mr. Chairman, no.
 The CHAIRMAN. The clerk will report the total.
 The CLERK. Three yeas, eight nays.
 The CHAIRMAN. The amendment is not agreed to.
 Further amendments?
 Mr. Woodall.
 Mr. WOODALL. I have an amendment on behalf of Mr. Burgess.
 The CHAIRMAN. The clerk will report the amendment.
 The CLERK. Amendment No. 31 to House Resolution 965, offered
 by Mr. Woodall of Georgia.
 [The amendment of Mr. Woodall follows:]

AMENDMENT TO H. RES. 895
OFFERED BY M

In section 4(h), add at the end the following:
 “Under such regulations, the chair of a committee conducting proceedings remotely under this section shall ensure that members of the committee have access to dedicated technical support from the Chief Administrative Officer during the proceedings.”.



The CHAIRMAN. Mr. Woodall.

Mr. WOODALL. Thank you, Mr. Chairman.

All of the minority rights I discussed earlier that you assured me would be protected in the guidance go by the wayside if a member can't unmute their phone, if a member has a technical problem. We are not all created technologically equal in our understanding and our use of technology. So this amendment by Dr. Burgess would say that, if we are going to go down this road, each committee chairman must ensure there is a dedicated CAO support team available to each member of the committee in real time because, unlike our night life where an inability to communicate with your spouse is just an inconvenience, inability to communicate with your chairman in the middle of a markup is of exponential importance when it comes to doing the legislative business. So having that technical support team, recognizing that we are not all equally skilled, I think would go a long way to ensuring the comfort of members in this new process.

The CHAIRMAN. So we agree that members need to be given technical support to be able to comply with the new rules if we would operate remotely, but I don't think we feel comfortable prescribing how that is done. Different committees rely on different technical support teams. And so I agree with this in spirit, but in real life, I would urge a "no" vote at this particular time.

Mr. WOODALL. Mr. Chairman, I don't know how individual committees pay for their support staff, but what's unique about the CAO support staff is that it is a nonpartisan staff. Again, when it comes to partisan concerns, are we suppressing the minority, who is getting the help of having the nonpartisan office directed by the chairman as opposed to the partisan offices that support—

The CHAIRMAN. I don't know what their capacity is, to be honest with you, so the idea of just taking this like this, you know, I would be reluctant to do so at this point. I would urge a "no" vote.

Mr. WOODALL. Well, to alleviate some of Dr. Burgess' concerns, Mr. Chairman, having assured folks that we would make a pathway forward so that all members could participate, that this would increase participation as opposed to diminish it, if we don't even know what the CAO's capacity is, if we don't know what the committee's individual capacity is, how can we be confident going down this road?

The CHAIRMAN. Yeah. I don't know even that this is the best group to do it. So I would urge a "no" vote. And I would just say that I'm not sure there is anything I could do or say that would alleviate Mr. Burgess's concerns. So I would urge a "no" vote.

Vote on the Woodall amendment. All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. Scanlon?

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments?

Mr. Who?

Mr. COLE. Right here.

The CHAIRMAN. Oh, Mr. Cole.

Mr. COLE. Thank you very much, Mr. Chairman.

This is actually pretty simple. This amendment would require that any issues with remote operation should be included in the committee report on activities. We are embarking again in a new area here. This will just give us a systematic way to know what the problems are and address them. And if they are highlighted in every committee's report, I just think that taking remedial action becomes a lot easier. So I think it is a pretty practical thing to do.

I yield back. Oh, I am sorry, I had an amendment at the desk.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 32 to House Resolution, offered by Mr. Cole.

Mr. COLE. I would ask that the reading be dispensed with.

[The amendment of Mr. Cole follows:]

AMENDMENT TO H. RES. 895**OFFERED BY M** . _____

Page 11, insert after line 4 the following (and redesignate the succeeding provision accordingly):

1 (i) REPORTING ON ISSUES ARISING FROM CON-
 2 DUCTING PROCEEDINGS REMOTELY.—A committee shall
 3 include in any report filed with the House with respect
 4 to any proceeding conducted remotely under this section
 5 a description of any issues arising from conducting the
 6 proceeding remotely.



Mr. COLE. And I think I have explained the amendment sufficiently. So I don't think there is any additional explanation required.

I yield back, Mr. Chairman.

The CHAIRMAN. We have heard the gentleman's amendment. Any discussion?

The vote is on the Cole amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mr. COLE. Roll call.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mr. Woodall?

Mr. WOODALL. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

Mr. COLE. Mr. Chairman, could I make a quick point?

The CHAIRMAN. The clerk will report the total.

The CLERK. Three yeas, eight nays.

The CHAIRMAN. Mr. Cole.

Mr. COLE. I ask you that you consider this when you are putting together your guidance. It is certainly appropriate, and again it is serious.

The CHAIRMAN. I appreciate that, and we will.

Mr. COLE. I appreciate that very much. Thank you.

Further amendments?

Mrs. Lesko.

Mrs. LESKO. Thank you, Mr. Chair. I have an amendment at the desk on behalf of Mr. Burgess.

The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 33 to House Resolution 965, offered by Mrs. Lesko of Arizona.

[The amendment of Mrs. Lesko follows:]

AMENDMENT TO H. RES. 895
OFFERED BY M. _____

Page 11, insert after line 4 the following (and redesignate the succeeding provision accordingly):

1 (i) REPORT ON AVAILABILITY OF OTHER FACILI-
2 TIES.—No committee may conduct remote proceedings
3 under this section until the Committee on House Adminis-
4 tration has submitted to the House a plan under which
5 committees will be able to make greater use of other facili-
6 ties in the United States Capitol Complex to conduct hear-
7 ings and markups in person.



Mrs. LESKO. Thank you, Mr. Chairman.

Many of my colleagues on the other side have expressed their serious and legitimate concerns about ensuring that committees can meet safely following the recommendations of the CDC and Attending Physician. I agree with their concerns about ensuring that large communities have the capacity to meet.

Mr. Chairman, that is why I offer this amendment, which would require the Committee on House Administration to develop a plan that would allow committees to more fully use the Capitol Complex for hearings and markups prior to permitting the use of remote operations. We have large, significantly underutilized spaces that can be used for the House's business. Emancipation Hall, CVC meeting rooms, auditoriums, these could all be converted to allow for Congress to continue its work before implementing a solution that overturns more than 200 years of precedent.

And, with that, I urge my members to support this amendment, and I yield back.

The CHAIRMAN. You heard the Lesko amendment.

Any discussion?

If not, the vote is on the Lesko amendment.

All those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mrs. LESKO. Roll call.

The CHAIRMAN. The clerk will call the roll.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.

The CLERK. Mrs. Torres, no.

Mr. Perlmutter?

Mr. PERLMUTTER. No.

The CLERK. Mr. Perlmutter, no.

Mr. Raskin?

Mr. RASKIN. No.

The CLERK. Mr. Raskin, no.

Ms. Scanlon?

Ms. SCANLON. No.

The CLERK. Ms. Scanlon, no.

Mr. Morelle?

Mr. MORELLE. No.

The CLERK. Mr. Morelle, no.

Ms. Shalala?

Ms. SHALALA. No.

The CLERK. Ms. Shalala, no.

Ms. Matsui?

Ms. MATSUI. No.

The CLERK. Ms. Matsui, no.

Mr. Cole?

Mr. COLE. Aye.

The CLERK. Mr. Cole, aye.

Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mr. Woodall, aye.

Mr. Burgess?

[No response.]

The CLERK. Mrs. Lesko?

Mrs. LESKO. Aye.

The CLERK. Mrs. Lesko, aye.

Mr. Chairman?

The CHAIRMAN. No.

The CLERK. Mr. Chairman, no.

The CHAIRMAN. The clerk will report the total.

The CLERK. Three ayes, eight nays.

The CHAIRMAN. The amendment is not agreed to.

Further amendments?

Mrs. Lesko.

Mrs. LESKO. I have an amendment at the desk.

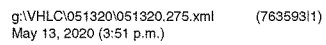
The CHAIRMAN. The clerk will report the amendment.

The CLERK. Amendment No. 34 to House Resolution 965, offered
by Mr. Woodall of Georgia.

[The amendment of Mr. Woodall follows:]

1 **SEC. 5. STUDY OF FEASIBILITY OF REMOTE VOTING IN**
2 **HOUSE.**

3 The chair of the Committee on House Administra-
4 tion, in consultation with the ranking minority member,
5 shall study the feasibility of using technology to conduct
6 remote voting in the House.



Mr. WOODALL. Mr. Chairman, first let me say I have taken absolutely no pleasure in our proceedings today. The circumstances that bring us here are disturbing and painful, and the work that we have to do here today changes a process that is near and dear to all of us, and we are doing it in the name of trying to get to a better ending.

The anxieties that you heard shared by all of the witnesses, save Mr. Hoyer, who testified today were anxieties that came from a very—a place of partisan that is rampant in this institution today, not that anyone questions your leadership or anyone on this committee, but that concern that partisanship creeps in seemingly to everything that we do. Had we found a bipartisan solution to move forward, again incrementally or large scale, we would not be having this conversation today, and the anxiety would still be present but in a much diminished way, anxiety because we all want to serve our constituents as best we can but confidence that we were doing it in a collaborative way.

So this final amendment from Dr. Burgess changes section 5 and changes it from a study of implementation of remote voting in the House to study a remote voting in the House. The most significant thing that this resolution does today is provide for the certification of remote voting in the U.S. House of Representatives on the floor of the House and is the most consequential thing in this piece of legislation.

And so asking the House Administration Committee, rather than to study it and to certify let's do it, to study it and then tell us that we are ready to do it so that we can then have a vote of the House on that—it would, it would require one more Rules Committee markup. It would require us to be down on the floor for one more roll call vote. But, no, you cannot do anything that is going to satisfy all of the concerns of the minority, but you could do this one thing that would thwart the majority's goals not one iota and would give the minority and I believe the American people a degree of confidence in the direction we are going that is not contained in the underlying resolution.

I think Dr. Burgess is spot on here. Let's proceed with the study exactly as the legislation requires, and when the conclusion comes back from the House Administration Committee to do this most consequential thing of moving to remote voting on the floor of the House, let's come back and have a final vote, not on that measure as part of a giant package, not on that measure as a part of a multibill rule, but on that measure and that measure alone.

With that, I yield back.

The CHAIRMAN. You heard the gentleman's amendment.

Any discussion?

Hearing none, the vote is on the Woodall amendment.

All of those in favor, say aye.

Opposed, no.

In the opinion of the chair, the noes have it.

Mr. WOODALL. Roll call, please, Mr. Chairman.

The CHAIRMAN. The clerk will call the role.

The CLERK. Mr. Hastings?

[No response.]

The CLERK. Mrs. Torres?

Mrs. TORRES. No.
 The CLERK. Mrs. Torres, no.
 Mr. Perlmutter?
 Mr. PERLMUTTER. No.
 The CLERK. Mr. Perlmutter, no.
 Mr. Raskin?
 Mr. RASKIN. No.
 The CLERK. Mr. Raskin, no.
 Ms. Scanlon?
 Ms. SCANLON. No.
 The CLERK. Ms. Scanlon, no.
 Mr. Morelle?
 Mr. MORELLE. No.
 The CLERK. Mr. Morelle, no.
 Ms. Shalala?
 Ms. SHALALA. No.
 The CLERK. Ms. Shalala, no.
 Ms. Matsui?
 Ms. MATSUI. No.
 The CLERK. Ms. Matsui, no.
 Mr. Cole?
 Mr. COLE. Aye.
 The CLERK. Mr. Cole, aye.
 Mr. Woodall?
 Mr. WOODALL. Aye.
 The CLERK. Mr. Woodall, aye.
 Mr. Burgess?
 [No response.]
 The CLERK. Mrs. Lesko?
 Mrs. LESKO. Aye.
 The CLERK. Mrs. Lesko, aye.
 Mr. Chairman?
 The CHAIRMAN. No.
 The CLERK. Mr. Chairman, no.
 The CHAIRMAN. The clerk will report the total.
 The CLERK. Three yeas, eight nays.
 The CHAIRMAN. The amendment is not agreed to.
 Further amendments?
 Any final comments? Mr. Cole.

Mr. COLE. If I may, Mr. Chairman. First of all, I want to thank you very much for the spirit in which you conducted the hearing. I know it is a long hearing. I know it is a contentious topic. I know we don't agree on everything, but you have been extraordinarily fair, as you have been throughout the process, and I appreciate that.

Mr. COLE. I also want to, for the record, note—I know there is some frustration with talking a lot about the guidance, but remember, we haven't seen the guidance yet, and our members have a lot of concerns that they ask us collectively to express and points to make and that was the spirit in which we operated. And I know you and I will have good and extensive comments and discussions about the guidance as we go forward. I have no doubt about that whatsoever.

I also want to address a point that our distinguished majority leader made or a concern he expressed, and I want to reassure him as well. My concerns, and I think the concerns on our side, and I know some of these are shared on your side, are about changing the nature of the institution. They are really not about the relative power of the majority and the minority.

Honestly, this is a majoritarian institution, the power is where it belongs. It is with the majority. I don't have any dispute. And I don't think the majority leader or any member of our ad hoc panel was trying in any way, shape, or form to change that. I am much more profoundly worried, and I know you know this because we have had this discussion about the nature of the institution. I am very worried that some of these changes will diminish the power of the individual member pretty dramatically and enhance the power of leadership in both the majority and the minority pretty dramatically.

I also think the use or overuse of this particular—whether it is for remote voting, whether it is for a virtual committee meeting hearings, will ultimately weaken us as a branch of government vis-à-vis the executive branch. The executive branch is in here actually operating.

And I also think there is a concern, and you heard it from some of the members today, that we are asking lots of other Americans to do their work, to show up and do their work. And they are heroes all, doctors, nurses, obviously, but the unsung heroes are people at food processing plants and people that are driving trucks and people that are stocking shelves. And I know you feel that way too because I have heard you express that sentiment on many occasions.

I know my own hometown, when I was there in our extended break, I go to the same 7-Eleven every morning, get a cup of coffee. Know the people there, and they were there every morning and there was a truck there every morning making sure that there was food supplies and there was gasoline. So we have asked a lot of Americans to do ours. And I think as our members—we understand we need to change the way we operate. This very committee meeting and the way we have arranged ourselves and the way we have operated is an admission of that, and I think we all share that. But we do think broadly that we ought to be here doing our work and that we run lots of risk and weaken the institution and I think inhibit, rather than maximize, the chance for bipartisan cooperation by going down this road.

So while we have great concerns about the rule and the changes that it proposes and, you know, our amendment suggestions, I suspect our debate will suggest that tomorrow, please don't think it is because I have any doubt about your motives. I don't, or any other member of the majority on this or certainly the majority leader.

I do have concerns about the judgments that have been made, and you tried to work with us where you could, I appreciate that. We tried to work with you where we could. We didn't get all the way there, but we got more of the way there than perhaps this hearing might suggest. I hope we can continue to do that. I look forward to working with you as you work through the difficult issue of the guidance.

And so with that, we may not agree on this one, but I have always found you and your staff fair and congenial to work with. I know that is going to continue going forward, and I look forward to that process, Mr. Chairman.

I yield back.

The CHAIRMAN. Well, thank you. And let me just say to the gentleman from Oklahoma, my friend, I appreciate his kind words. I also appreciate the fact that on this issue, which is contentious, but also on a number of other issues that have been contentious that have come before this committee, he, his staff, but the other members of the committee on the Republican side, the Democratic side, we have somehow managed to get through it all in a way that seems to sometimes be the exception to the rule here in the House, which, you know—the fact that the Rules Committee seems to oftentimes be more civil and more thoughtful, and I don't say that in any disrespect to the chairs who are out in the audience here today, but we have—I mean, we have been through a lot. We did hearings on Medicare for All, with impeachment, you know, Article I responsibilities, and we have had some very thoughtful interactions here in this committee.

Let me just say, finally, none of us want to be in this moment where we have to confront these issues about not just the safety of members, because as I said before, I think that is the least of our concern. It is the safety of everybody who works up here that we have to be thinking of ways to operate remotely.

We have never experienced anything like this pandemic in our lifetime. And lots of references were made to the 1918 pandemic, but when you look back on the history, Congress didn't function. And I gave an example of the fact that we couldn't—Congress couldn't get together to approve more doctors to go to rural areas. And probably as a result of that more people died than should've as a result of that crisis.

That is an example of how—that is an example of failure. And so, look, we are trying to come up with a package that hopefully is not only temporary, but very, very temporary, and hopefully we will not have to look to this in the fall; that somehow we will manage to get through this or, you know, miraculously find a vaccine or something. But I think the one thing I have become very convinced of is that the status quo is unacceptable, and we need to figure out a way—you know, if members can come here, that is fine, but not everybody can. And we also need to think about the safety of our staff and the people who work here.

So, in any event, I know we are going to not agree on this, but, again, I want to thank the gentleman from Oklahoma for his incredible partnership up here. I want to thank all the members of the committee, Democrats and Republicans, and the staffs, in particular, for, you know, all the work leading up to this hearing. But, you know, this has been a long day and it is nowhere near over yet. So, again, I want to thank everybody.

So if there are no further amendments, the question is now on the motion to order the measure reported favorably to the House.

All those in favor will say aye.

All those opposed, no.

The ayes have it. The motion is adopted.

Mr. COLE. Roll call.
 The Chairman. The clerk will call the roll.
 The CLERK. Mr. Hastings?
 [No response.]
 The CLERK. Mrs. Torres?
 Mrs. TORRES. Aye.
 The CLERK. Mrs. Torres, aye.
 Mr. Perlmutter?
 Mr. PERLMUTTER. Aye.
 The CLERK. Mr. Perlmutter, aye.
 Mr. Raskin?
 Mr. RASKIN. Aye.
 The CLERK. Mr. Raskin, aye.
 Ms. Scanlon?
 Ms. SCANLON. Aye.
 The CLERK. Ms. Scanlon, aye.
 Mr. Morelle?
 Mr. MORELLE. Aye.
 The CLERK. Mr. Morelle, aye.
 Ms. Shalala?
 Ms. SHALALA. Aye.
 The CLERK. Ms. Shalala, aye.
 Ms. Matsui?
 Ms. MATSUI. Aye.
 The CLERK. Ms. Matsui, aye.
 Mr. Cole?
 Mr. COLE. No.
 The CLERK. Mr. Cole, no.
 Mr. Woodall?
 Mr. WOODALL. No.
 The CLERK. Mr. Woodall, no.
 Mr. Burgess?
 Dr. BURGESS. No.
 The CLERK. Mr. Burgess, no.
 Mrs. Lesko?
 Mrs. LESKO. No.
 The CLERK. Mrs. Lesko, no.
 Mr. Chairman?
 The CHAIRMAN. Aye.
 The CLERK. Mr. Chairman, aye.
 The CHAIRMAN. The clerk will report the total?
 The CLERK. Eight yeas, four nays.
 The CHAIRMAN. The motion is adopted. And without objection,
 the motion to reconsider is laid upon the table.
 All right. So now——
 Mr. RASKIN. Mr. Chairman.
 The CHAIRMAN. Yes.
 Mr. RASKIN. There were two little bits of misinformation that
 were still floating around from the last set of amendments and dis-
 cussion. I wonder if it would be appropriate for me to take a second
 to correct them now?
 The CHAIRMAN. Do you want to publicly correct the record?
 Mr. RASKIN. Yes, I would.
 The CHAIRMAN. I will yield to you right now.

Mr. RASKIN. Thank you, Mr. Chairman.

I understand from the House Committee on Administration that in the CARES Act there was \$25 million that was appropriated to the House of Representatives, but it was stated in the discussion of one of the Lesko amendments that that was money that went to the MRA accounts of individual members. It did not. That money went to, overwhelmingly it looks like contractors for the House of Representatives in the cafeteria, in maintenance, and technology, especially technology contractors who helped to set people up at home. As far as I know and as far as we can tell, there was no money that was allocated to MRAs. So that is the first.

And the second I wanted to correct, Mr. Chairman, is that one of the witnesses before took issue with—I am sorry? Okay.

The CHAIRMAN. I think we need to pause this to start the next hearing.

[Whereupon the committee proceeded to other business.]

JAMES P. MCCOYVERN,
MASSACHUSETTS
CHAIRMAN

ALCEE L. HASTINGS, FLORIDA
NORMA TORRES, CALIFORNIA
ED PERLMUTTER, COLORADO
JAMIE RASKIN, MARYLAND
MARY GAY SCANLON, PENNSYLVANIA
JOSEPH D. MORELLE, NEW YORK
DONNA E. SHULALA, FLORIDA
MARK DESAULNIER, CALIFORNIA

DON SIBSON, STAFF DIRECTOR
(202) 225-2061

www.rules.house.gov



Committee on Rules
U.S. House of Representatives
3151 The Capitol
Washington, DC 20515-6269

ONE HUNDRED SIXTEENTH CONGRESS

TOM COLE, OKLAHOMA
RANKING MINORITY MEMBER

ROB WOODALL, GEORGIA
MICHAEL C. BURGESS, TEXAS
DEBBIE LESKO, ARIZONA

MINORITY OFFICE
H-152, THE CAPITOL
(202) 225-9191

NOTICE OF ACTION

Thursday, May 14, 2020
7:59 PM

H. Res. 965 Committee on Rules Authorizing remote voting by proxy in the House of Representatives and providing for official remote committee proceedings during a public health emergency due to a novel coronavirus, and for other purposes.

The Committee, by record vote of 8-4, reported favorably without amendment H. Res. 965, Authorizing remote voting by proxy in the House of Representatives and providing for official remote committee proceedings during a public health emergency due to a novel coronavirus, and for other purposes.

H. Res. 965 Committee on Rules Authorizing remote voting by proxy in the House of Representatives and providing for official remote committee proceedings during a public health emergency due to a novel coronavirus, and for other purposes.

H.R. 6800 Committee on Appropriations The Heroes Act

The Committee granted, by record vote of 8-4, a rule providing for consideration of H. Res. 965, Authorizing remote voting by proxy in the House of Representatives and providing for official remote committee proceedings during a public health emergency due to a novel coronavirus, and for other purposes, and H.R. 6800, the Heroes Act.

The rule provides for consideration of H. Res. 965, authorizing remote voting by proxy in the House of Representatives and providing for official remote committee proceedings during a public health emergency due to a novel coronavirus, and for other purposes, under a closed rule. The rule provides that upon adoption of this resolution it shall be in order without intervention of any point of order to consider H. Res. 965. The rule provides one hour of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Rules. The rule provides that the resolution shall be considered as read.

The rule provides for consideration of H.R. 6800, the Health and Economic Recovery Omnibus Emergency Solutions Act, under a closed rule. The rule provides that upon adoption of this resolution it shall be in order to consider H.R. 6800 without intervention of any question of consideration. The rule provides two hours of general debate equally divided and controlled by the chair and ranking minority member of the Committee on Appropriations. The rule waives all points of order against consideration of the bill. The rule provides that the amendment printed in the Rules Committee report shall be considered as adopted and the bill, as amended, shall be considered as read. The rule waives all points of order against provisions in the bill, as amended. The rule provides that clause 2(e) of rule XXI shall not apply during consideration of the bill. The rule

provides one motion to recommit with or without instructions. The rule provides that until completion of proceedings enabled by the first two sections of the resolution, the Chair may decline to entertain any intervening motion (except as expressly provided herein), resolution, question, or notice; and the Chair may decline to entertain the question of consideration.

Section 4 of the rule provides that on any legislative day during the period from May 19, 2020, through July 21, 2020: the Journal of the proceedings of the previous day shall be considered as approved; and the Chair may at any time declare the House adjourned to meet at a date and time to be announced by the Chair in declaring the adjournment.

The rule provides that the Speaker may appoint Members to perform the duties of the Chair for the duration of the period addressed by section 4 of the resolution.

The rule provides that each day during the period addressed by section 4 of the resolution shall not constitute a calendar day for the purposes of section 7 of the War Powers Resolution.

The rule provides that each day during the period addressed by section 4 of the resolution shall not constitute a legislative day for purposes of clause 7 of rule XIII.

The rule provides that each day during the period addressed by section 4 of the resolution shall not constitute a calendar or legislative day for purposes of clause 7(c)(1) of rule XXII.

The rule provides that each day during the period addressed by section 4 shall not constitute a legislative day for the purposes of clause 7 of rule XV.

The rule provides for consideration of concurrent resolutions providing for adjournment during the month of July, 2020.

The rule provides that it shall be in order at any time through the calendar day of July 19, 2020, for the Speaker to entertain motions that the House suspend the rules as though under clause 1 of rule XV, and that the Speaker or her designee shall consult with the Minority Leader or his designee on the designation of any matter for consideration pursuant to this section.

The rule waives the requirement of clause 6(a) of rule XIII for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House with respect to any resolution reported through the legislative day of July 21, 2020.



IV

House Calendar No. 78116TH CONGRESS
2D SESSION**H. RES. 965****[Report No. 116–420]**

Authorizing remote voting by proxy in the House of Representatives and providing for official remote committee proceedings during a public health emergency due to a novel coronavirus, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2020

Mr. MCGOVERN submitted the following resolution; which was referred to the Committee on Rules

MAY 14, 2020

Reported from the Committee on Rules; referred to the House Calendar and ordered to be printed

RESOLUTION

Authorizing remote voting by proxy in the House of Representatives and providing for official remote committee proceedings during a public health emergency due to a novel coronavirus, and for other purposes.

1 *Resolved,*

1 **SECTION 1. AUTHORIZATION OF REMOTE VOTING BY**
2 **PROXY DURING PUBLIC HEALTH EMER-**
3 **GENCY DUE TO NOVEL CORONAVIRUS.**

4 (a) **AUTHORIZATION.**—Notwithstanding rule III, at
5 any time after the Speaker or the Speaker’s designee is
6 notified by the Sergeant-at-Arms, in consultation with the
7 Attending Physician, that a public health emergency due
8 to a novel coronavirus is in effect, the Speaker or the
9 Speaker’s designee, in consultation with the Minority
10 Leader or the Minority Leader’s designee, may designate
11 a period (hereafter in this resolution referred to as a “cov-
12 ered period”) during which a Member who is designated
13 by another Member as a proxy in accordance with section
14 2 may cast the vote of such other Member or record the
15 presence of such other Member in the House.

16 (b) **LENGTH OF COVERED PERIOD.**—

17 (1) **IN GENERAL.**—Except as provided in para-
18 graphs (2) and (3), a covered period shall terminate
19 45 days after the Speaker or the Speaker’s designee
20 designates such period.

21 (2) **EXTENSION.**—If, during a covered period,
22 the Speaker or the Speaker’s designee receives fur-
23 ther notification from the Sergeant-at-Arms, in con-
24 sultation with the Attending Physician, that the
25 public health emergency due to a novel coronavirus
26 remains in effect, the Speaker or the Speaker’s des-

1 ignee, in consultation with the Minority Leader or
2 the Minority Leader's designee, may extend the cov-
3 ered period for an additional 45 days.

4 (3) EARLY TERMINATION.—If, during a covered
5 period, the Speaker or the Speaker's designee re-
6 ceives further notification by the Sergeant-at-Arms,
7 in consultation with the Attending Physician, that
8 the public health emergency due to a novel coronavi-
9 rus is no longer in effect, the Speaker or the Speak-
10 er's designee shall terminate the covered period.

11 **SEC. 2. PROCESS FOR DESIGNATION OF PROXIES.**

12 (a) IN GENERAL.—

13 (1) DESIGNATION BY SIGNED LETTER.—In
14 order for a Member to designate another Member as
15 a proxy for purposes of section 1, the Member shall
16 submit to the Clerk a signed letter (which may be
17 in electronic form) specifying by name the Member
18 who is designated for such purposes.

19 (2) ALTERATION OR REVOCATION OF DESIGNA-
20 TION.—

21 (A) IN GENERAL.—At any time after sub-
22 mitting a letter to designate a proxy under
23 paragraph (1), a Member may submit to the
24 Clerk a signed letter (which may be in elec-

1 tronic form) altering or revoking the designa-
2 tion.

3 (B) AUTOMATIC REVOCATION UPON CAST-
4 ING OF VOTE OR RECORDING OF PRESENCE.—

5 If during a covered period, a Member who has
6 designated another Member as a proxy under
7 this section casts the Member's own vote or
8 records the Member's own presence in the
9 House, the Member shall be considered to have
10 revoked the designation of any proxy under this
11 subsection with respect to such covered period.

12 (3) NOTIFICATION.—Upon receipt of a letter
13 submitted by a Member pursuant to paragraphs (1)
14 or (2), the Clerk shall notify the Speaker, the major-
15 ity leader, the Minority Leader, and the other Mem-
16 ber or Members involved of the designation, alter-
17 ation, or revocation.

18 (4) LIMITATION.—A Member may not be des-
19 ignated as a proxy under this section for more than
20 10 Members concurrently.

21 (b) MAINTENANCE AND AVAILABILITY OF LIST OF
22 DESIGNATIONS.—The Clerk shall maintain an updated
23 list of the designations, alterations, and revocations sub-
24 mitted or in effect under subsection (a), and shall make

1 such list publicly available in electronic form and available
2 during any vote conducted pursuant to section 3.

3 **SEC. 3. PROCESS FOR VOTING DURING COVERED PERIODS.**

4 (a) RECORDED VOTES ORDERED.—

5 (1) IN GENERAL.—Notwithstanding clause 6 of
6 rule I, during a covered period, the yeas and nays
7 shall be considered as ordered on any vote on which
8 a recorded vote or the yeas and nays are requested,
9 or which is objected to under clause 6 of rule XX.

10 (2) INDICATIONS OF PROXY STATUS.—In the
11 case of a vote by electronic device, a Member who
12 casts a vote or records a presence as a designated
13 proxy for another Member under this resolution
14 shall do so by ballot card, indicating on the ballot
15 card “by proxy”.

16 (b) DETERMINATION OF QUORUM.—Any Member
17 whose vote is cast or whose presence is recorded by a des-
18 ignated proxy under this resolution shall be counted for
19 the purpose of establishing a quorum under the rules of
20 the House.

21 (c) INSTRUCTIONS FROM MEMBER AUTHORIZING
22 PROXY.—

23 (1) RECEIVING INSTRUCTIONS.—Prior to cast-
24 ing the vote or recording the presence of another
25 Member as a designated proxy under this resolution,

1 the Member shall obtain an exact instruction from
2 the other Member with respect to such vote or
3 quorum call, in accordance with the regulations re-
4 ferred to in section 6.

5 (2) ANNOUNCING INSTRUCTIONS.—Immediately
6 prior to casting the vote or recording the presence
7 of another Member as a designated proxy under this
8 resolution, the Member shall seek recognition from
9 the Chair to announce the intended vote or recorded
10 presence pursuant to the exact instruction received
11 from the other Member under paragraph (1).

12 (3) FOLLOWING INSTRUCTIONS.—A Member
13 casting the vote or recording the presence of another
14 Member as a designated proxy under this resolution
15 shall cast such vote or record such presence pursu-
16 ant to the exact instruction received from the other
17 Member under paragraph (1).

18 **SEC. 4. AUTHORIZING REMOTE PROCEEDINGS IN COMMIT-**
19 **TEES.**

20 (a) AUTHORIZATION.—During any covered period,
21 and notwithstanding any rule of the House or its commit-
22 tees—

23 (1) any committee may conduct proceedings re-
24 motely in accordance with this section, and any such

1 proceedings conducted remotely shall be considered
2 as official proceedings for all purposes in the House;

3 (2) committee members may participate re-
4 motely during in-person committee proceedings, and
5 committees shall, to the greatest extent practicable,
6 ensure the ability of members to participate re-
7 motely;

8 (3) committee members may cast a vote or
9 record their presence while participating remotely;

10 (4) committee members participating remotely
11 pursuant to this section shall be counted for the pur-
12 pose of establishing a quorum under the rules of the
13 House and the committee;

14 (5) witnesses at committee proceedings may ap-
15 pear remotely;

16 (6) committee proceedings conducted remotely
17 are deemed to satisfy the requirement of a “place”
18 for purposes of clauses 2(g)(3) and 2(m)(1) of rule
19 XI; and

20 (7) reports of committees (including those filed
21 as privileged) may be delivered to the Clerk in elec-
22 tronic form, and written and signed views under
23 clause 2(l) of rule XI may be filed in electronic form
24 with the clerk of the committee.

1 (b) LIMITATION ON BUSINESS MEETINGS.—A com-
2 mittee shall not conduct a meeting remotely or permit re-
3 mote participation at a meeting under this section until
4 a member of the committee submits for printing in the
5 Congressional Record a letter from a majority of the mem-
6 bers of the committee notifying the Speaker that the re-
7 quirements for conducting a meeting in the regulations re-
8 ferred to in subsection (h) have been met and that the
9 committee is prepared to conduct a remote meeting and
10 permit remote participation.

11 (c) REMOTE PROCEEDINGS.—Notwithstanding any
12 rule of the House or its committees, during proceedings
13 conducted remotely pursuant to this section—

14 (1) remote participation shall not be considered
15 absence for purposes of clause 5(c) of rule X or
16 clause 2(d) of rule XI;

17 (2) the chair may declare a recess subject to
18 the call of the chair at any time to address technical
19 difficulties with respect to such proceedings;

20 (3) copies of motions, amendments, measures,
21 or other documents submitted to the committee in
22 electronic form as prescribed by the regulations re-
23 ferred to in subsection (h) shall satisfy any require-
24 ment for the submission of printed or written docu-

1 ments under the rules of the House or its commit-
2 tees;

3 (4) the requirement that results of recorded
4 votes be made available by the committee in its of-
5 fices pursuant to clause 2(e)(1)(B)(i) of rule XI
6 shall not apply;

7 (5) a committee may manage the consideration
8 of amendments pursuant to the regulations referred
9 to in subsection (h);

10 (6) counsel shall be permitted to accompany
11 witnesses at a remote proceeding in accordance with
12 the regulations referred to in subsection (h); and

13 (7) an oath may be administered to a witness
14 remotely for purposes of clause 2(m)(2) of rule XI.

15 (d) REMOTE PARTICIPANTS DURING IN-PERSON
16 PROCEEDINGS.—All relevant provisions of this section and
17 the regulations referred to in subsection (h) shall apply
18 to committee members participating remotely during in-
19 person committee proceedings held during any covered pe-
20 riod.

21 (e) TRANSPARENCY FOR MEETINGS AND HEAR-
22 INGS.—Any committee meeting or hearing that is con-
23 ducted remotely in accordance with the regulations re-
24 ferred to in subsection (h)—

25 (1) shall be considered open to the public;

1 (2) shall be deemed to have satisfied the re-
2 quirement for non-participatory attendance under
3 clause 2(g)(2)(C) of rule XI; and

4 (3) shall be deemed to satisfy all requirements
5 for broadcasting and audio and visual coverage
6 under rule V, clause 4 of rule XI, and accompanying
7 committee rules.

8 (f) SUBPOENAS.—

9 (1) AUTHORITY.—Any committee or chair
10 thereof empowered to authorize and issue subpoenas
11 may authorize and issue subpoenas for return at a
12 hearing or deposition to be conducted remotely
13 under this section.

14 (2) USE OF ELECTRONIC SIGNATURE AND
15 SEAL.—During any covered period, authorized and
16 issued subpoenas may be signed in electronic form;
17 and the Clerk may attest and affix the seal of the
18 House to such subpoenas in electronic form.

19 (g) EXECUTIVE SESSIONS.—

20 (1) PROHIBITION.—A committee may not con-
21 duct closed or executive session proceedings re-
22 motely, and members may not participate remotely
23 in closed or executive session proceedings.

24 (2) MOTION TO CLOSE PROCEEDINGS.—Upon
25 adoption of a motion to close proceedings or to move

1 into executive session with respect to a proceeding
2 conducted remotely under this section, the chair
3 shall declare the committee in recess subject to the
4 call of the chair with respect to such matter until it
5 can reconvene in person.

6 (3) EXCEPTION.—Paragraphs (1) and (2) do
7 not apply to proceedings of the Committee on Eth-
8 ics.

9 (h) REGULATIONS.—This section shall be carried out
10 in accordance with regulations submitted for printing in
11 the Congressional Record by the chair of the Committee
12 on Rules.

13 (i) APPLICATION TO SUBCOMMITTEES AND SELECT
14 COMMITTEES.—For purposes of this section, the term
15 “committee” or “committees” also includes a sub-
16 committee and a select committee.

17 **SEC. 5. STUDY AND CERTIFICATION OF FEASIBILITY OF RE-**
18 **MOTE VOTING IN HOUSE.**

19 (a) STUDY AND CERTIFICATION.—The chair of the
20 Committee on House Administration, in consultation with
21 the ranking minority member, shall study the feasibility
22 of using technology to conduct remote voting in the House,
23 and shall provide certification to the House upon a deter-
24 mination that operable and secure technology exists to
25 conduct remote voting in the House.

1 (b) REGULATIONS.—

2 (1) INITIAL REGULATIONS.—On any legislative
3 day that follows the date on which the chair of the
4 Committee on House Administration provides the
5 certification described in subsection (a), the chair of
6 the Committee on Rules, in consultation with the
7 ranking minority member, shall submit regulations
8 for printing in the Congressional Record that pro-
9 vide for the implementation of remote voting in the
10 House.

11 (2) SUPPLEMENTAL REGULATIONS.—At any
12 time after submitting the initial regulations under
13 paragraph (1), the chair of the Committee on Rules,
14 in consultation with the ranking minority member,
15 may submit regulations to supplement the initial
16 regulations submitted under such paragraph for
17 printing in the Congressional Record.

18 (c) IMPLEMENTATION.—Notwithstanding any rule of
19 the House, upon notification of the House by the Speaker
20 after the submission of regulations by the chair of the
21 Committee on Rules under subsection (b)—

22 (1) Members may cast their votes or record
23 their presence in the House remotely during a cov-
24 ered period;

1 (2) any Member whose vote is cast or whose
2 presence is recorded remotely under this section
3 shall be counted for the purpose of establishing a
4 quorum under the rules of the House; and

5 (3) the casting of votes and the recording of
6 presence remotely under this section shall be subject
7 to the applicable regulations submitted by the chair
8 of the Committee on Rules under subsection (b).

9 **SEC. 6. REGULATIONS.**

10 To the greatest extent practicable, sections 1, 2, and
11 3 of this resolution shall be carried out in accordance with
12 regulations submitted for printing in the Congressional
13 Record by the chair of the Committee on Rules.

House Calendar No. 78

116TH CONGRESS
2D SESSION

H. RES. 965

[Report No. 116-420]

RESOLUTION

Authorizing remote voting by proxy in the House of Representatives and providing for official remote committee proceedings during a public health emergency due to a novel coronavirus, and for other purposes.

MAY 14, 2020

Referred to the House Calendar and ordered to be
printed

116TH CONGRESS } 2d Session }	HOUSE OF REPRESENTATIVES {	REPORT 116-420
----------------------------------	----------------------------	-------------------

AUTHORIZING REMOTE VOTING BY PROXY IN THE HOUSE OF REPRESENTATIVES AND PROVIDING FOR OFFICIAL REMOTE COMMITTEE PROCEEDINGS DURING A PUBLIC HEALTH EMERGENCY DUE TO A NOVEL CORONAVIRUS, AND FOR OTHER PURPOSES

MAY 14, 2020.—Referred to the House Calendar and ordered to be printed

Mr. MCGOVERN, from the Committee on Rules,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H. Res. 965]

The Committee on Rules to whom was referred the resolution (H. Res. 965) authorizing remote voting by proxy in the House of Representatives and providing for official remote committee proceedings during a public health emergency due to a novel coronavirus, and for other purposes.

CONTENTS

	Page
Purpose and Summary	1
Background and Need for Legislation	2
Committee Consideration	9
Committee Votes	9
Committee Oversight Findings and Recommendations	20
Performance Goals and Objectives	20
Advisory Committee Statement	22
Section-by-Section Analysis of the Legislation	22
Changes in Existing House Rules Made by the Resolution, as Reported	25
Dissenting Views	26

PURPOSE AND SUMMARY

This resolution authorizes remote voting by proxy in the House of Representatives, provides for official remote committee proceedings during a public health emergency due to a novel coronavirus, and directs a study and certification of remote technology to conduct remote voting in the House once such a system is operable and secure. The resolution authorizes the Speaker or her designee, in consultation with the Minority Leader or his des-

ignee, to establish a 45-day period during which a Member may authorize another Member to cast a vote on their behalf or record their presence in the House at any time that the Speaker is notified by the Sergeant-at-Arms, in consultation with the Attending Physician, of a public health emergency due to a novel coronavirus. This resolution lays out the procedures for a Member to authorize another Member to vote or record their presence on their behalf, to alter or revoke such authorization, and for voting in the House Chamber while this temporary system is in effect. The resolution further authorizes remote proceedings in committees during the 45-day covered period, for Members to participate remotely during such proceedings and to be counted for purposes of establishing a quorum, and any chair or committee empowered to issue and authorize subpoenas to do so for return at a hearing or deposition conducted remotely. The resolution provides procedures for conducting remote hearings and markups and requires committees to further conduct these proceedings in accordance with regulations submitted for printing in the Congressional Record by the chair of the Committee on Rules. The resolution directs the chair of the Committee on House Administration, in consultation with the ranking minority member, to study the feasibility of using technology to conduct remote voting in the House and to provide certification to the House upon a determination that such operable and secure technology exists. Finally, after such certification, the resolution provides that the chair of the Committee on Rules shall submit regulation in the Congressional Record and the Speaker is then authorized to notify the House that Members may cast their votes remotely during the public health emergency period covered by the resolution.

BACKGROUND AND NEED FOR LEGISLATION

COVID-19 pandemic

On December 31, 2019, a new virus detected in Wuhan, China was first reported to the World Health Organization (WHO).¹ By early March, the new virus had spread around the globe and the WHO officially declared the 2019 novel coronavirus, known as COVID-19, to be a pandemic.²

On January 21, 2020, the Centers for Disease Control and Prevention (CDC) confirmed the first case of the novel coronavirus in the United States³ and on February 29, 2020, the first U.S. death from the virus was reported.⁴ Since that time, in the U.S. over 1,400,000 cases have been reported and over 80,000 people have died.⁵ These numbers continue to rise. Globally, over 4 million cases and 300,000 deaths have been reported.⁶

¹Rolling updates on coronavirus disease (COVID-19), World Health Organization, last visited April 20, 2020, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

²Coronavirus: COVID-19 Is Now Officially A Pandemic, WHO Says, NPR, Mar. 11, 2020, <https://www.npr.org/sections/goatsandsoda/2020/03/11/814474930/coronavirus-covid-19-is-now-officially-a-pandemic-who-says>.

³First Travel-related Case of 2019 Novel Coronavirus Detected in United States, Centers for Disease Control, Press Release, Jan. 21, 2020, <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

⁴CDC, Washington State Report First COVID-19 Death, Centers for Disease Control, Media Statement, Feb. 29, 2020, <https://www.cdc.gov/media/releases/2020/s0229-COVID-19-first-death.html>.

⁵Johns Hopkins University, Coronavirus Resource Center, <https://coronavirus.jhu.edu/us-map>.

⁶Id.

In response to the pandemic outbreak in the U.S., most states and municipalities have taken action to slow the spread of the virus, including ordering the closing of nonessential businesses and issuing stay-at-home orders.⁷ At the federal level, the White House and the CDC have issued social distancing guidance and recommendations for a phased reopening of states when conditions improve.⁸ Currently, over twenty states, Washington, DC, Guam, and Puerto Rico have ongoing stay-at-home orders and about 60 percent of the population, or roughly 199 million Americans, are subject to stay-at-home restrictions.⁹

Ordering Americans to stay home and shuttering nonessential businesses, while necessary to slow the spread of the virus and prevent the outbreak from overwhelming the health care system, has resulted in an economic slowdown and an historic rise in unemployment. The current unemployment rate in the United States is estimated to be over 14 percent.¹⁰ More than 36 million Americans have applied for unemployment.¹¹ This economic crisis has fueled calls for states to begin easing restrictions to allow Americans to return to work. So far, over two dozen states have eased restrictions and allowed certain businesses to reopen.¹² However, Dr. Anthony Fauci, the Director of the National Institute of Allergy and Infectious Diseases, testified before that Senate Committee on Health, Education, Labor and Pensions, warning that if states and cities reopen prematurely there is a risk of spreading the outbreak that “will set you back, not only leading to some suffering and death that could be avoided but could even set you back on the road to try to get economic recovery.”¹³

In response to this ongoing public health emergency and economic crisis, Congress has acted swiftly to get resources where they are needed most. Already, Congress has passed four bills that have been signed into law: the Coronavirus Preparedness and Response Supplemental Appropriations Act, the Families First Coronavirus Response Act, the Coronavirus Aid, Relief and Economic Security (CARES) Act, and the Paycheck Protection and Healthcare Enhancement Act. In part, these bills provide money for hospitals, establish a new loan program to encourage small businesses to keep workers on the payroll, and provide stimulus checks directly to Americans. These bills are just the first in what will be many steps Congress takes as the nation faces one of the most serious health and economic emergencies in over a century.

⁷ *More states issue stay-at-home orders as coronavirus crisis escalates*, Axios, Apr. 6, 2020, <https://www.axios.com/states-shelter-in-place-coronavirus-66e9987a-a674-42bc-8d3f-070a1c0ee1a9.html>.

⁸ Guidelines: Opening Up America Again, <https://www.whitehouse.gov/openingamerica/>.

⁹ *A map of the US cities and states under lockdown—and those that are reopening*, Business Insider, May 8, 2020, <https://www.businessinsider.com/us-map-stay-at-home-orders-lockdowns-2020-3>.

¹⁰ Department of Labor, Labor Force Statistics from the Current Population Survey, <https://data.bls.gov/timeseries/LNS14000000>.

¹¹ Unemployment Insurance Weekly Claims, News Release, May 14, 2020, <https://www.dol.gov/ui/data.pdf>.

¹² *Supra* note 9.

¹³ *Fauci tells Congress that states face serious consequences if they reopen too quickly*, CNN, May 12, 2020, <https://www.cnn.com/2020/05/12/politics/anthony-fauci-congress-hearing/index.html>.

Government institutions begin to work remotely

As social distancing and stay-at-home orders become the norm to slow the spread of this pandemic, government institutions in the United States, and throughout the world, have been forced to rethink how they operate, including establishing procedures to allow for remote voting to ensure they are able to pass legislation required to respond to the ongoing pandemic.

For example, over a dozen state legislatures and the District of Columbia have instituted some form of remote voting for members during the COVID-19 pandemic. Arizona, California, Connecticut, the District of Columbia, Minnesota, New Jersey, New York, Oregon, South Dakota, Utah, Vermont, and Washington legislatures have established remote voting by telephone, video conference, or other electronic means. In addition, Arkansas, Kentucky, Oklahoma, and Pennsylvania have instituted remote voting via proxy for their members.

Many other countries have also implemented remote voting in their legislatures, including Argentina, Azerbaijan, Brazil, China, Mexico, Norway, Philippines, Portugal, Romania, Spain, Taiwan, and the European Union Parliament. In addition, the legislatures of France and New Zealand have utilized remote voting by proxy during this pandemic.

Legislatures are not the only branches of government looking to adopt remote proceedings to continue operations during the pandemic. The U.S. judicial system has also had to revamp how it operates. “Federal circuit, district, and bankruptcy courts are utilizing multiple audio and video conferencing technologies to host oral arguments, initial appearances, preliminary hearings, arraignments, misdemeanor sentencing, and other procedures remotely.”¹⁴ The National Center for State Courts has recommended that state courts restrict or end jury trials, generally suspend in-person proceedings, and encourage or require teleconference and videoconferences in lieu of hearings.¹⁵ In response, most state courts have instituted such restrictions.¹⁶ Notably, for the first time in its history, the United States Supreme Court began hearing oral arguments by telephone in May.¹⁷

House of Representatives’ voting options during a pandemic

The pandemic is having a ripple effect across the United States, impacting the lives and livelihoods of people in every Congressional district. This is true for the Members representing those districts as well. The operations of the House of Representatives have been affected by social distancing, isolation, and stay-at-home orders that have captured every corner of the nation, making travel to, and physical attendance in, the House Chamber difficult. Since the start of this pandemic, numerous Members of Congress have tested

¹⁴ *Courts Deliver Justice Virtually Amid Coronavirus Outbreak*, U.S. Courts, Apr. 8, 2020, <https://www.uscourts.gov/news/2020/04/08/courts-deliver-justice-virtually-amid-coronavirus-outbreak>.

¹⁵ Coronavirus and the courts, National Center for State Courts, <https://www.ncsc.org/pandemic>.

¹⁶ *Id.*

¹⁷ *The Supreme Court Will Hear Arguments by Phone. The Public Can Listen In*, NY Times, Apr. 13, 2020. <https://www.nytimes.com/2020/04/13/us/politics/supreme-court-phone-arguments-virus.html>.

positive for COVID-19 or have been forced to quarantine after exposure to the virus.

With the House needing to vote on critical legislation to respond to the pandemic, while at the same time being faced with the prospect that many Members may not be able to leave isolation or travel during the pandemic, on March 23, 2020, the House Committee on Rules Majority Staff released a report entitled “Majority Staff Report Examining Voting Options During the COVID-19 Pandemic.”¹⁸ The report explored a number of voting options and outlined several factors to be considered before any remote voting plan can be adopted in response to the limitations presented by the virus. The report identified currently available voting options, including passing legislation by unanimous consent, requiring Members to return to the Capitol to take recorded votes while maintaining social distancing, employing paired voting, and utilizing a provisional quorum. The report also explored the potential to provide for new rules to allow for enhanced unanimous consent (increasing the number of Members required to object to a unanimous consent agreement), proxy voting, and remote voting.

While every option presented unique advantages and disadvantages, the report concluded that “[t]here is currently no perfect solution to allow absent Members to vote on the floor. However, proxy voting is likely the best of the options available under the circumstances.”¹⁹

In addition to the Committee on Rules Majority Staff report analyzing voting options, on April 22, the Virtual Congress Task Force was formed.²⁰ This bipartisan Task Force, comprised of the Majority and Minority Leaders, as well as the Chairs and Ranking Members of the Committee on Rules and the Committee on House Administration, examined ways Congress could better adapt to emergencies like the coronavirus pandemic. This examination, comprised of several meetings and discussions, included not just remote voting options, but also remote committee proceedings and the technology involved.

Temporary remote voting by proxy during the pandemic

Based on the findings of the March 23 report, the work of the Virtual Congress Task Force, and after consultation with Members and outside experts, Rules Committee Chairman McGovern introduced H. Res. 965, providing for a temporary voting system permitting Members of the House of Representatives to vote remotely by proxy during the COVID-19 pandemic. Pursuant to this resolution, any Member could provide specific instructions for each vote to a fellow Member who is present in the chamber and has been authorized to cast those votes on their behalf. A Member casting a vote on behalf of another Member would be required to have exact direction from the Member granting proxy on how to vote and would have to follow that direction. There would be *no* ability to grant a general proxy. Members granting proxy would have to direct each

¹⁸ Majority Staff Report Examining Voting Options During the COVID-19 Pandemic. Available at: https://rules.house.gov/sites/democrats.rules.house.gov/files/StaffReport_VotingOptions.pdf.

¹⁹ Id. at 5.

²⁰ Chairman McGovern Releases Statement on Bipartisan Task Force, Press Release, Apr. 22, 2020, <https://rules.house.gov/press-releases/chairman-mcgovern-releases-statement-bipartisan-task-force>.

and every vote, with the Member casting the proxy vote acting more as a voting machine under the direction of the Member granting proxy. In short, this resolution calls for temporary, low-tech remote voting.

Importantly, proxy voting is not a novel concept in Congress. The House permitted proxy voting in its committees for many decades and the Senate still permits it in its committees today. This resolution authorizes remote voting by proxy that provides for a minimal and ministerial type of delegation on the part of the Member granting proxy. Compared to other remote voting proposals, this more conservative option will allow Members to vote remotely by proxy in a secure way and provides Members an opportunity to vote on critical COVID-19 response legislation much more quickly.

Constitutionality of remote voting by proxy

The Constitution explicitly grants the House and Senate the authority to make their own “Rules of Proceedings.”²¹ In addition, the Supreme Court has twice, in cases from the 1890s, issued opinions that provide solid grounds to believe that the House’s establishment of remote voting rules is consistent with its constitutional authority.

In *Field v. Clark*, 143 U.S. 649 (1892), the Supreme Court ruled that challenges to the internal operation of Congress are not justiciable in the federal courts.²² In *United States v. Ballin*, 144 U.S. 1 (1892), the Court found that, while the Constitution requires the presence of a majority—or quorum—of the House to do business, the Constitution also leaves it to the House to determine its own rules.²³ The Court in *Ballin* went on to say:

[Congress] may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations, all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate, or even more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and, within the limitations suggested, absolute and beyond the challenge of any other body or tribunal.²⁴

Any constitutional analysis should also examine the rationale and context in which the House is utilizing its expansive rule-making authority to consider and implement H. Res. 965. This resolution allowing for remote voting by proxy is temporary and will operate only while there is a very significant risk to public health. Arguably, not establishing such a remote voting rule itself represents a risk to public health and safety. If Members must travel

²¹ Art. I, Sec. 5, Cl. 2.

²² 143 U.S. 649 (1892).

²³ 144 U.S. 1, 5 (1892).

²⁴ *Id.* at 5.

to vote in the House Chamber it is not just themselves who are put in danger—their families, their staffs, and all of the people they encounter—are unnecessarily endangered as well. In other words, the remote voting by proxy plan established by H. Res. 965 does not simply ensure the safety of the Members voting—it acts to safeguard all the people with whom they have contact, both during and after their travel. Such travel risks presented by unnecessary travel is precisely why virtually all state governors have implemented orders against non-essential movement and interaction among the general populace; these public safety policies make no less sense when they are applied as well to Members of Congress.

Simply put, as Erwin Chemerinsky, the renowned constitutional scholar and Dean of the University of California, Berkeley School of Law, has written, “[t]he Constitution bestows on each House of Congress broad discretion to determine the rules for its own proceedings . . . This authority is expansive and would include the ability to adopt a rule to permit proxy voting. Nothing in the Constitution specifies otherwise.”²⁵

Given this analysis, remote voting by proxy is likely to withstand constitutional scrutiny.

Study, determination, and certification of additional remote voting technology

Remote voting by proxy is a necessary and immediately feasible low-tech option allowing Members who are unable to be in the House Chamber due to this pandemic to have their vote cast by a Member who can be present. However, the immediate feasibility of remote proxy voting does not mean that it necessarily represents the final stage in remote voting. Remote proxy voting is a good first step, but it still requires that some Members must be present in the Chamber. As this pandemic evolves, such presence—even by a small number of Members—may not be feasible due to potentially worsening public health concerns. Scientists have predicted that a second wave of the virus could severely impact our nation in the coming months. Robert Redfield, Director of the Centers for Diseases Control and Prevention, said last month, “There’s a possibility that the assault of the virus on our nation next winter will actually be even more difficult than the one we just went through.”²⁶ Therefore, adopting additional remote voting procedures incorporating more advanced technology may not only be warranted, it may be required.

To ensure that the House is fully prepared to operate under such a scenario, H. Res. 965 directs the chair of the Committee on House Administration, in consultation with the ranking minority member, to study the feasibility of using technology to conduct remote voting in the House and to provide certification to the House upon a determination that such operable and secure technology exists. After the certification, the Chair of the Rules Committee is directed to issue regulations on the implementation of remote voting and the Speaker is then authorized to notify the House that Mem-

²⁵ Letter from Dean Chemerinsky to Chairman McGovern, May 13, 2020 (on file with the Committee).

²⁶ *CDC director warns second wave of coronavirus is likely to be even more devastating*, Wash. Post, Apr. 21, 2020, <https://www.washingtonpost.com/health/2020/04/21/coronavirus-second-wave-cdc-director/>.

bers may cast their votes remotely during this public health emergency. By directing the study of remote voting technology, and then laying out a procedure by which such technology may be implemented, H. Res. 965 provides the House with the tools to begin voting entirely remotely should the need arise.

Failure to adequately study and prepare to execute the use of more advanced technology to vote entirely remotely during this crisis would not only hinder the House from operating should the situation deteriorate further.

Official remote committee hearings and markups

With trillions of taxpayer dollars being appropriated to combat this virus, new programs being established to aid workers and small businesses, and the Trump Administration attempting to address the pandemic, the American people deserve, and the Constitution requires, that the People's representatives conduct oversight into our nation's response. That means conducting oversight hearings.

Additionally, while Congress works to respond to this pandemic, other vitally important business impacting the United States, such as funding the government and providing for the national defense, continues to require the House's attention. That means conducting markups on these critical pieces of legislation.

While hearings and markups have typically been held in-person, just as with remote voting, there is no constitutional requirement to do so—and our nation is dealing with anything but typical circumstances. The same public health concerns that make it extremely difficult, if not impossible, for Members to travel to the Capitol to vote are likewise present as an obstacle to conducting in-person hearings and markups.

Failing to hold these committee proceedings is not an option. Just as the millions of Americans have begun utilizing technology such as videoconferencing to work remotely in response to widespread stay-at-home orders, the work of the People's House cannot be shuttered in a time of crisis. Therefore, in addition to putting in place a system of temporary remote proxy voting and authorizing the study, certification, and implementation of technology to further facilitate remote voting, this resolution also provides for the ability of House committees to operate official proceedings remotely.

Importantly, in preparation for holding these virtual official proceedings, a number of committees have already held virtual forums and briefings using videoconference technology. For example:

- The Veterans Affairs Committee held a full committee, bipartisan virtual forum on homelessness among veterans.
- The Small Business Committee held a full committee, bipartisan virtual forum on the implementation of the CARES Act.
- The Foreign Affairs Committee held a full committee, bipartisan virtual briefing on authoritarianism, disinformation, and good governance with former Secretary of State Madeleine Albright and other experts.
- The Education and Labor Committee held a full committee, bipartisan virtual forum on responding to the pandemic.

- The Homeland Security Committee has held seven virtual forums to hear from a range of experts, including former FEMA Administrator Craig Fugate and former Homeland Security Secretary Jeh Johnson.

- The Natural Resources Committee has livestreamed four forums on the coronavirus pandemic, including the impact on longstanding environmental and economic inequalities in our country and the federal response to coronavirus in the U.S. territories.

Building on the lessons learned from these informal proceedings, H. Res. 965 authorizes committees to begin holding remote official proceedings, including hearings, markups, and depositions. Allowing for these important official proceedings to be conducted remotely ensures that the Legislative Branch can continue to operate fully on behalf of the American people during this public health crisis.

Conclusion

The United States is facing the worst pandemic since the Spanish Influenza of 1918. With over a million reported cases, tens of thousands of lives lost, and tens of millions of Americans unemployed and struggling to make ends meet, the House of Representatives must continue operating to address the needs of the nation during this crisis. This means that, within the authority granted to it by the Constitution, the House must establish procedures to enable the People's representatives to pass critical relief legislation and to conduct oversight of our nation's response to this virus. The temporary remote voting by proxy plan, procedures for remote official committee proceedings, and study of the feasibility of technology to facilitate further remote voting by Members laid out in this resolution achieves these goals.

COMMITTEE CONSIDERATION

The Committee on Rules met on May 14, 2020, in open session and ordered H. Res. 965 favorably reported to the House by a record vote of 8 yeas and 4 nays, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report the legislation and amendments thereto. A motion by Mr. McGovern to report the resolution to the House with a favorable recommendation was agreed to by a record vote of 8 yeas and 4 nays, a quorum being present. The names of Members voting for and against follow:

Rules Committee record vote No. 303

Date: May 14, 2020

Motion to order H. Res. 965 reported favorably to the House.
Agreed to: 8–4

Majority Members		Minority Members	
	Vote		Vote
Mr. Hastings		Mr. Cole	Nay
Mrs. Torres	Yea	Mr. Woodall	Nay
Mr. Perlmutter	Yea	Mr. Burgess	Nay

Majority Members	Vote	Minority Members	Vote
Mr. Raskin	Yea	Mrs. Lesko	Nay
Ms. Scanlon	Yea		
Mr. Morelle	Yea		
Ms. Shalala	Yea		
Ms. Matsui	Yea		
Mr. McGovern, Chairman	Yea		

The committee also considered the following amendments on which record votes were requested. The names of Members voting for and against follow:

Rules Committee record vote No. 271

Date: May 14, 2020

Amendment (no. 1) offered by Mr. Woodall to ensure the resolution doesn't go into effect until the Clerk of the House certifies that a system is in place for the secure receipt and validation of the designation of proxies by Members under this resolution. Defeated: 4–6

Majority Members	Vote	Minority Members	Vote
Mr. Hastings .....	.....	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon .....	.....	
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui .....	.....	
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 272

Date: May 14, 2020

Amendment (no. 2) offered by Mr. Cole to require the concurrence of the Minority Leader to designate a covered period. Defeated: 4–7

Majority Members	Vote	Minority Members	Vote
Mr. Hastings .....	.....	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon .....	.....	
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 273

Date: May 14, 2020.

Amendment (no. 3) offered by Mr. Cole to sunset the covered period on June 30, 2020. The amendment also requires a two-thirds vote to extend the covered period beyond June 30, 2020. Defeated: 4–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings .....	.....	Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea

Majority Members	Vote	Minority Members	Vote
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 274

Date: May 14, 2020

Amendment (no. 4) offered by Mr. Woodall to strike the provisions allowing Members to record the presence of other Members who designated them as their proxy. Defeated: 4–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 275

Date: May 14, 2020

Amendment (no. 5) offered by Mr. Woodall to require a report by the General Counsel on defedning proxy voting against claims of unconstitutionality. Defeated: 4–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 276

Date: May 14, 2020

Amendment (no. 6) offered by Mr. Burgess to require the Committee on House Administration to submit a report analyzing the accuracy and integrity of the votes cast by Members in the House, including the votes cast by designated proxies under this resolution, and shall include in the report a description of any errors in the votes cast by designated proxies under this resolution. The Committee on House Administration shall submit this report not later than 30 days after the end of the year. Defeated: 4–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	Yea
Mr. Raskin	Nay	Mrs. Lesko	Yea

Majority Members	Vote	Minority Members	Vote
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 277

Date: May 14, 2020

Amendment (no. 7) offered by Mr. Cole to limit measures for which votes may be cast or presence recorded by proxy to measures designated by the Speaker or her designee, in consultation with the Minority Leader or his designee, as a response to the COVID-19 pandemic; any vote related to a question of the privileges of the House under rule IX; any vote on a question unrelated to a specific measure or matter; or a quorum call. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 278

Date: May 14, 2020

Amendment (no. 8) offered by Mr. Woodall to prohibit a Member from casting the vote or recording the presence of another Member as a designated proxy with respect to any bill or resolution considered under the suspension of the rules, unless the bill or resolution is designated by the Speaker or her designee, in consultation with the Minority Leader or his designee, as a response to the COVID-19 pandemic. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 279

Date: May 14, 2020

Amendment (no. 9) offered by Mr. Cole to prohibit a Member from casting a vote or recording the presence of another Member as a designated proxy under this resolution with respect to any bill or resolution which has not been reported by a committee of the House. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee Record Vote No. 280

Date: May 14, 2020

Amendment (no. 10) offered by Mrs. Lesko to prohibit a Member from casting the vote or recording the presence of another Member as a designated proxy under this resolution with respect to any bill or resolution relating to impeachment, censure, or contempt. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 281

Date: May 14, 2020

Amendment (no. 11) offered by Mrs. Lesko to require the Committee on House Administration to reduce the amount available under the Members' Representational Allowance by the amount which would have been paid from the Allowance for the Member's travel expenses if the Member casts a vote or records the presence of another Member by proxy or attends a proceeding remotely at any time during that fiscal year. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 282

Date: May 14, 2020

Amendment (no. 13) offered by Mr. Cole to require the regulations under Section 6 in the resolution to include a requirement that, not later than 24 hours prior to the vote or quorum call involved, the Speaker notify Members that votes may be cast or presence may be recorded by designated proxies. The amendment also

requires that these regulations include the establishment of minimum periods of time for the casting of votes and the recording of presence by designated proxies, and a requirement for the use of contingency plans which may be implemented in the event of failure of any technology to carry out sections 1, 2, or 3. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess .....	.....
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 283

Date: May 14, 2020

Amendment (no. 14) offered by Mrs. Lesko to limit the number of proxies any Member can hold to two. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess .....	.....
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 284

Date: May 14, 2020

Amendment (no. 15) offered by Mrs. Lesko to strike section 4 of this resolution, authorizing remote proceedings in committees. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess .....	.....
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 285

Date: May 14, 2020

Amendment (no. 16) offered by Mrs. Lesko to exclude the Committee on Ethics and the Permanent Select Committee on Intelligence from the provisions authorizing remote proceedings in committees. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 286

Date: May 14, 2020

Amendment (no. 17) offered by Mr. Cole to prohibit committee members from recording their presence remotely. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 287

Date: May 14, 2020

Amendment (no. 18) offered by Mr. Cole to strike “to the greatest extent practicable” in the provision requiring committees to ensure the ability of members to participate remotely to the greatest extent practicable. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 288

Date: May 14, 2020

Amendment (no. 19) offered by Mrs. Lesko to ensure the guidance referenced in section 4(h) outlines how the committee intends to address specific time zones of members; how the committee intends to address technological limitations that may exist that preclude members from full participation in remote sessions; rules on decorum including attire and how the chair would handle witnesses and members who go over their time limit, and the muting of member microphones; and how the chair plans to control platform access, including providing the ranking member a list of those with participatory access to the platform 24-hours in advance of the scheduled committee meeting. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 289

Date: May 14, 2020

Amendment (no. 20) offered by Mrs. Lesko to prohibit a committee from conducting a markup remotely. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 290

Date: May 14, 2020

Amendment (no. 21) offered by Mrs. Lesko to prohibit a committee from taking depositions remotely. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 291

Date: May 14, 2020

Amendment (no. 22) offered by Mr. Cole to create a point of order against consideration of legislation reported by a committee under any remote proceeding if the committee in marking up or reporting the legislation violated any rule of the House, the committee, or any provision of this resolution. It shall not be in order to consider a rule or order that waives the application of this point of order. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		

Majority Members	Vote	Minority Members	Vote
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 292

Date: May 14, 2020

Amendment (no. 23) offered by Mr. Cole to require in the regulations referenced in section 4(h) that the chair of a committee wishing to conduct remote proceedings publish guidance in the Congressional Record on how the chair intends to authenticate and validate member participation. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee Record Vote No. 293

Date: May 14, 2020

Amendment (no. 24) offered by Mr. Woodall to require that under the regulations referenced in section 4(h), the chair of a committee conducting proceedings remotely shall ensure that members of the committee have the right to offer a motion to adjourn and have the right to offer a motion to postpone consideration. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee Record Vote No. 294

Date: May 14, 2020

Amendment (no. 25) offered by Mr. Woodall to require that under the regulations referenced in section 4(h), the chair of a committee conducting proceedings remotely shall ensure that members of the committee have the right to demand words be taken down. Defeated: 3–7

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter		Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		

Majority Members	Vote	Minority Members	Vote
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 295

Date: May 14, 2020

Amendment (no. 26) offered by Mr. Woodall to require that under the regulations referenced in section 4(h), the chair of a committee conducting proceedings remotely shall ensure that there is 7-day notice before any hearing and 24-hour availability of such text of any matter to be considered by the committee. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 296

Date: May 14, 2020

Amendment (no. 27) offered by Mr. Woodall to require that, under the regulations referenced in section 4(h), the chair of a committee conducting proceedings remotely shall ensure that members of the committee shall have the right to offer motions to appeal the ruling of the chair. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 297

Date: May 14, 2020

Amendment (no. 28) offered by Mr. Woodall to require that under the regulations referenced in section 4(h), the chair of a committee conducting proceedings remotely shall ensure that members of the committee have the right to offer second degree amendments, but may not require the pre-filing of amendments. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		

Majority Members	Vote	Minority Members	Vote
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee Record Vote No. 298

Date: May 14, 2020

Amendment (no. 30) offered by Mrs. Lesko to require the chair to notify the Members of the committee of the circumstances which required a recess to be declared within 24 hours of recessing committee proceedings. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee Record Vote No. 299

Date: May 14, 2020

Amendment (no. 31) offered by Mr. Woodall to require that under the regulations referenced in section 4(h), the chair of a committee conducting proceedings remotely shall ensure that Members have access to dedicated technical support from the Chief Administrative Officer during the proceedings. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 300

Date: May 14, 2020

Amendment (no. 32) offered by Mr. Cole to require committees to include in any report filed with the House with respect to any proceeding conducted remotely a description of any issues arising from conducting the proceeding remotely. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		

Majority Members	Vote	Minority Members	Vote
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 301

Date: May 14, 2020

Amendment (no. 33) offered by Mrs. Lesko to prohibit any committees from conducting remote proceedings until the Committee on House Administration has submitted to the House a plan under which committees will be able to make greater use of other facilities in the United States Capitol Complex to conduct hearings and markups in person. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

Rules Committee record vote No. 302

Date: May 14, 2020

Amendment (no. 34) offered by Mr. Woodall to amend section 5 to only require the chair of the Committee on House Administration, in consultation with the ranking minority member, to study the feasibility of using technology to conduct remote voting in the House. Defeated: 3–8

Majority Members	Vote	Minority Members	Vote
Mr. Hastings		Mr. Cole	Yea
Mrs. Torres	Nay	Mr. Woodall	Yea
Mr. Perlmutter	Nay	Mr. Burgess	
Mr. Raskin	Nay	Mrs. Lesko	Yea
Ms. Scanlon	Nay		
Mr. Morelle	Nay		
Ms. Shalala	Nay		
Ms. Matsui	Nay		
Mr. McGovern, Chairman	Nay		

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee made oversight findings and recommendations that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

This resolution authorizes remote voting by proxy in the House of Representatives, provides for official remote committee proceedings during a public health emergency due to a novel coronavirus, and directs a study and certification of remote tech-

nology to conduct remote voting in the House once such a system is operable and secure. In doing so, this resolution ensures that the House can function to its full constitutional and legislative ability while taking the necessary precautions to protect against the public health threat posed by a novel coronavirus. The resolution also emphasizes that the authority for Members to remote vote by proxy and for committees to conduct remote proceedings is temporary and limited to addressing the current public health crisis. The resolution authorizes the Speaker or her designee, in consultation with the Minority Leader or his designee, to establish a 45-day period during which a Member may authorize another Member to cast a vote on their behalf or record their presence in the House at any time that the Speaker is notified by the Sergeant-at-Arms, in consultation with the Attending Physician, of a pandemic emergency due to a novel coronavirus. But also, the resolution provides that if during that 45-day period, the Speaker or her designee receive further notification by the Sergeant-at-Arms, in consultation with the Attending Physician, that the public health emergency due to a novel coronavirus is no longer in effect, then the ability of a Member to vote or record their presence remotely by proxy is terminated as well as the authorization for remote committee proceedings.

To ensure that Members' votes are cast accurately, the resolution lays out the procedures for a Member to authorize another Member to vote or record their presence on their behalf, to alter or revoke such authorization, and on voting in the House Chamber while this temporary voting system is in effect. Importantly, prior to casting a vote, a Member designated as a proxy must obtain exact instruction from the Member wishing to vote remotely by proxy. A Member whose vote is cast or whose presence is recorded by a designated proxy shall be counted for the purpose of establishing a quorum. The resolution also clarifies that if a Member has designated another Member as their proxy, but the Member granting proxy then casts their own vote in person, that Member shall be considered to have revoked their proxy designation.

The resolution further authorizes remote proceedings in committees during the 45-day covered period, for Members to participate remotely during such proceedings and to be counted for purposes of establishing a quorum, and any chair or committee empowered to issue and authorize subpoenas to do so for return at a hearing or deposition conducted remotely. The resolution authorizes committees to hold official hearings, markups, and depositions remotely. Like the authorization allowing for remote proxy voting during the covered period, if during that 45-day period, the Speaker or her designee receive further notification by the Sergeant-at-Arms, in consultation with the Attending Physician, that the public health emergency due to a novel coronavirus is no longer in effect, then the ability of committees to hold remote official proceedings is also terminated. This temporary authorization during a pandemic will allow committees to consider important legislation as well as conduct their constitutional oversight duties.

Finally, the resolution directs the chair of the Committee on House Administration, in consultation with the ranking minority member, to study the feasibility of using technology to conduct remote voting in the House and to provide certification to the House

upon a determination that such operable and secure technology exists; after such certification the chair of the Committee on Rules shall submit regulations in the Congressional Record and the Speaker is then authorized to notify the House that Members may cast their votes remotely during the public health emergency period covered by the resolution. This study, determination, certification, and implementation of remote voting technology ensures that were the pandemic situation to further deteriorate, making even a limited presence of Members in the House Chamber extremely difficult, the House will still be able to vote on critical legislation.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

SECTION-BY-SECTION ANALYSIS

Section 1: Authorization and time period for remote voting by proxy

Authorization—Authorizes the Speaker, in consultation with the Minority Leader, to designate a 45-day period during which Members may vote or record their presence remotely by proxy in the House (not the Committee of the Whole), after the Speaker receives notification from the Sergeant-at-Arms, in consultation with the Attending Physician, that a pandemic emergency due to a novel coronavirus is in effect.

Extension—Allows the Speaker, in consultation with the Minority Leader, to extend the authority for an additional 45 days if the Sergeant-at-Arms, in consultation with the Attending Physician, notifies the Speaker that the public health emergency due to a novel coronavirus remains in effect.

Early termination—Terminates the 45-day period early if the Speaker is further notified by the Sergeant-at-Arms, in consultation with the Attending Physician, that the pandemic emergency due to a novel coronavirus is no longer in effect.

Section 2: Designating proxies

Signed letter—Requires a signed letter submitted to the Clerk from any Member who wishes to vote by proxy naming the Member who is authorized to serve as their proxy. The letter may be submitted in electronic form, including email. This letter will be used by the Clerk to certify that a Member serving as proxy has the authority to cast votes on behalf of the Member voting remotely by proxy. It is the responsibility of the Members involved to ensure that separately provided voting instruction, detailed below, is followed.

Altering or revoking proxy—Allows Members to submit further signed letters to the Clerk to alter or revoke their proxy, and automatically revokes the proxy designation if a Member votes in-person. These further letters may also be submitted in electronic form, including email.

Notification—Requires the Clerk to notify the Speaker, Majority Leader, Minority Leader, and the Member designated (and in the case of an alteration, the Member formerly designated) as proxy of any designation, alteration, or revocation of proxy.

Proxy designation limitation—Limits the number of proxy designations a Member may hold to 10 at a time.

List of proxy designations—Requires the Clerk to maintain and keep updated a list of all proxy designations, alterations, and revocations and to make that list publicly available electronically, including available during any vote.

Section 3: Voting process

Yeas and nays—Provides that if a Member requests the yeas and nays, a recorded vote, or makes a point of no quorum under clause 6 of rule XX, the yeas and nays will be considered as ordered (rather than the chair first determining there is sufficient support), preventing the need for large numbers of Members to gather in the chamber to ensure a sufficient number to support their request.

Indicating proxy status—Requires Members who cast votes on behalf of another Member to indicate that the vote is “by proxy” on a ballot card.

Quorum—Provides that a Member whose votes are cast by proxy are counted for the purpose of establishing a quorum in the House.

Proxy vote instructions—Requires that a Member voting on behalf of another Member obtain *an exact instruction* with respect to the specific vote or quorum call, to cast that vote pursuant to that instruction, and is required to seek recognition from the Chair to announce the exact instruction they received. If a Member casting a proxy vote does not receive instructions from the Member granting the proxy then that Member may not cast the vote.

Section 4: Remote committee proceedings

Authorization—Provides that during the 45-day period designated by the Speaker under section 1, notwithstanding any rule of the House or its committees, committees may conduct proceedings (hearings, markups, or any other official business) remotely pursuant to the provisions of section 4 and the regulations authorized by section 4, and those proceedings will be considered as official proceedings. This authorization does not prevent committees from being able to use official resources to hold unofficial remote forums and roundtables.

Remote participation—Allows committee Members to participate remotely during in-person committee proceedings and state that the committee must, to the greatest extent practicable, ensure that Members can participate remotely. This authorization does not mean that a committee is prohibited from holding a remote proceeding unless all Members are able to participate remotely or that a committee is required to procure technology for members to participate remotely. Instead, it requires committees to provide Members who wish to participate remotely the opportunity to do so, but anticipates that in rare circumstances technological issues may prevent committees from ensuring remote participation.

Voting—Provides that committee Members may vote or record their presence remotely.

Quorum—Provides that committee Members participating remotely shall be counted for the purposes of establishing a quorum.

Witnesses—Allows witnesses to appear remotely.

Designating “place”—Allows the committee chair to designate the “place” of a committee proceeding, satisfying the requirement of clauses 2(g)(3) and 2(m)(1) of rule XI, as being conducted remotely.

Committee reports—Allows that reports of committees (including those filed as privileged) may be delivered to the Clerk in electronic form and written and signed supplemental, additional, and dissenting views may also be filed in electronic form with the clerk of the committee.

Limitations on business meetings—Requires that before a committee holds a business meeting remotely or permits remote participation in a business meeting for the first time, a majority member of a committee must first submit a letter signed by a majority of the members of the committee for printing in the Congressional Record notifying the Speaker that the committee has complied with regulations for remote committee proceedings submitted for printing in the Congressional Record by the Rules Committee chair referenced in subsection (h) and that the committee is prepared to conduct a remote business meeting and permit remote participation during that meeting. Importantly, ensuring members can participate remotely pursuant to section 4(a)(2) does not mean that committees must allow remote participation in a markup if they have not completed the requirements found in the regulations referenced in subsection (h).

Remote proceedings—Provides that remote participants shall not be considered absent; that during remote committee proceedings the chair may declare a recess to address any technical difficulties; and that the requirement that the result of any recorded vote be made available by the committee in its offices (clause 2(e)(1)(B)(i) of rule XI) shall not apply.

Submitted or written documents—Allows for copies of motions, amendments, measures, or other documents submitted to the committee electronically pursuant to the regulations referred to in subsection (h) to satisfy any submission requirement for such documents under the rules of the House or its committees.

Amendment consideration—Provides that during a remote business meeting the committee may manage the consideration of amendments pursuant to regulations referred to in subsection (h).

Witness counsel—Permits the attendance of counsel for any witness appearing remotely before a committee in accordance with regulations referred to in subsection (h).

Witness oaths—Allows an oath to be administered to a witness remotely.

Transparency for meetings and hearings—Provides that any remote committee meeting or hearing conducted in accordance with regulations referred to in subsection (h) shall be considered open to the public.

Subpoenas—Provides that any committee or chair empowered to authorize and issue subpoenas may authorize and issue subpoenas for return at a hearing or deposition conducted remotely. During this period, authorized and issued subpoenas may be signed electronically and the Clerk may attest and affix the seal of the House to such subpoenas electronically.

Executive session—Prohibits a committee from conducting a closed or executive session proceeding remotely. If during a remote proceeding a motion by a Member to go into closed or executive ses-

sion is adopted, then the chair shall recess the meeting with respect to such matter until the proceeding can be reconvened in person. This prohibition on remote closed proceedings does not apply to the Committee on Ethics.

Regulations—Subsection (h) provides that this section shall be carried out in accordance with regulations submitted for printing in the Congressional Record by the Rules Committee chair. Consistent with past grants of regulatory authority to the chair of the Committee on Rules, this authority is not limited to a single submission of regulations.

Application—“Committee” includes select committees and subcommittees.

Section 5: Study on remote participation

Study and certification of remote voting technology—Requires the chair of the Committee on House Administration, in consultation with the ranking minority member, to study the feasibility of using technology to conduct remote voting in the House and to provide certification to the House upon a determination that such operable and secure technology exists.

Implementation of remote voting technology—Following certification by the chair of the Committee on House Administration, the chair of the Committee on Rules, in consultation with the ranking minority member, will submit regulations for printing in the Congressional Record that provide for implementation of remote voting in the House. After submission of these regulations, the Speaker is authorized to notify the House that Members may cast their votes or record their presence remotely.

Section 6: Regulations

Remote voting regulations—Provides that sections 1, 2, and 3 (remote voting by proxy) shall be carried out in accordance with regulations submitted for printing in the Congressional Record by the Rules Committee chair, to the greatest extent practicable. Consistent with past grants of regulatory authority to the chair of the Committee on Rules, this authority is not limited to a single submission of regulations.

CHANGES IN EXISTING HOUSE RULES MADE BY THE RESOLUTION, AS
REPORTED

In compliance with clause 3(g) of rule XIII of the Rules of the House of Representatives, the Committee finds that this resolution does not propose to repeal or amend a standing rule of the House.

DISSENTING VIEWS

The American people expect its elected Representatives to lead by example and continue to govern during these times, especially when we ask health care workers, grocery store clerks, and other front-line workers to keep going to work every single day. At the same time, we also recognize that changes to the way the House normally operates during a pandemic are appropriate. But a pandemic does not mean we should throw out 230 years of House practice and the Constitution. In fact, our founders faced many of the same questions we face today when they drafted the Constitution. Travel was long and dangerous, especially during a time of war. Proxy voting is something they easily could have implemented, and its omission leads us to conclude that they chose to draft the Constitution without providing for proxy voting. They knew the value of a Congress—a coming together of people and ideas—and therefore demanded physical presence to further us as an institution.

Before even addressing the Majority's proposal, it is critical to understand the process that led to this potentially flawed and deficient product. When Democrats were entrusted with the Majority in 2019, they promised things would be different. They instituted rules changes that would ensure regular order, such as ensuring committee hearings and markups before legislation would be considered by the Rules Committee and the House.

While these provisions made for good sound bites, the Majority has waived the rule requiring a markup on 5 bills and has foregone hearings on 7 House resolutions so far this Congress. And it is deeply disappointing that on such a fundamentally important piece of legislation, which changes how this House has operated for more than 230 years, the Majority has yet again failed to hold proper hearings and take testimony from witnesses. To be fair, this Committee did hold one unofficial, virtual roundtable discussion, limited to one hour, where Members were asked to limit themselves to one question a piece from two panelists. Such a consequential change certainly merits more than one hour of discussion and deserves hearings in all committees that would be impacted, especially the Committee on House Administration and the Committee on the Judiciary. While we appreciate the Committee holding this hearing and markup, they are certainly not designed to find common ground and develop a bipartisan proposal. As Chairman McGovern once stated “. . . usually when you have a lousy process, you have a lousy bill.” The process for consideration of this resolution has certainly been lousy and it is apparent in the product, which is riddled with both serious constitutional concerns and practical implementation issues.

We must make one point abundantly clear: this measure fails to pass constitutional muster in every regard. While the Constitutional limitations on the power of Congress may be inconvenient to

some with a desired policy outcome in mind, it is, nevertheless; the fundamental question that every Member of Congress must ask before casting a vote on this or any measure. The Majority has failed to provide sufficient Constitutional basis for this substantial change to the core functions of Congress, and as such, jeopardizes the legitimacy of the passage of any future legislation. There are constitutional options before the House, and should the Majority alter their partisan and short-sighted crusade, we would gladly explore these options with them in a bipartisan and expeditious manner.

Article I of the U.S. Constitution demands physical presence for Congress to perform core legislating functions. Physical presence is required for Congress to establish a “quorum” to conduct business (Art. 1, Sec. 5, Cl. 1); and in regards to “meeting” (Art. I, Sec. 4, Cl. 2), “assembling” (Art. I, Sec. 4, Cl. 2), and “attendance” (Art. I, Sec. 5, Cl. 1). The Constitution grants each Member the right to request for “the yeas and nays” and requires a recorded vote on any question “at the desire of one fifth present” (Art. 1, Sec. 5, Cl. 3). While the Majority may have novel arguments regarding the redefinition of presence, such an argument is inconsistent with the text of the Constitution and commonsense. In 1892 the Supreme Court ruled in *U.S. v. Ballin* that the House of Representatives lacks the authority to set rules that ignore constitutional restraints, the relevant restraint in the matter before us being that of physical presence.

The Constitution provides that “a majority of each [house] shall constitute a quorum to do business.” In other words, when a majority are present the house is in a position to do business. Its capacity to transact business is then established, created by the mere presence of a majority, and does not depend upon the disposition or assent or action, of any single member or fraction of the majority present. All that the Constitution requires is the presence of a majority, and when that majority are present the power of the house arises” (emphasis added).

As we referenced above, the Constitution requires Congress to assemble at least once a year and, as required, Congress has consistently physically gathered in a single location to conduct business. We can turn to *The Federalist Papers* for more color on this requirement. In Federalist No. 14, James Madison argued that “the natural limit of a republic is that distance from the centre which will barely allow the representatives to meet as often as may be necessary for the administration of public affairs.”

In Federalist No. 53, Madison, in arguing in favor of two-year terms for Members of the House, noted that “[t]he distance which many of the representatives will be obliged to travel, and the arrangements rendered necessary by that circumstance, might be much more serious objections with fit men to this service, if limited to a single year, than if extended to two years.”

The Constitution and the words of the founders leave no room to contemplate a scenario other than Members of Congress assembling and meeting in person in one location. There is simply no room in the constitutional confines of our government for Members

of the House of Representatives to meet in multiple or virtual locations.

For those who find these arguments unpersuasive or the call to preserve the integrity of the Constitution too theoretical to demand our fidelity, we urge them to carefully consider this warning: if any Member casts their vote on passage of a measure without being physical present in the chamber, it would raise the specter of illegitimacy of the final action taken by the House. A Member who disagrees with a potential change to the House rules could attempt to challenge the change in the courts, or a member of the public who is adversely affected by any law while the House is operating remotely could similarly allege that the law was not instituted through constitutional means. Both scenarios would damage the House as an institution and depending on the legislation in question, have far-reaching economic consequences.

The confines of the Constitution are not so rigid as to prevent Members of this body from finding a path forward that would allow for safe and effective governing. We urge the Majority to embrace Constitutional certainty and abandon this flawed proposal.

In addition to the serious Constitutional challenges contemplated by this resolution, it has the potential to fundamentally alter how the House operates. While the resolution only addresses proxy voting in the context of the current pandemic, relaxation of what it means to be incapacitated as an institution is a legitimate concern. So, while this proposal may be confined to the current crisis, it opens the door to allowing proxy voting in other circumstances—like fly-in days—because of the inconvenience of travel or weather-related incidents.

Proxy voting fundamentally undermines the role of Congress. Congress is derived from Latin words meaning “a coming together of people” and “to meet with; to fight with.” Proxy voting removes that personal element of Congress. Instead of a free-flowing debate and exchange of ideas, proxy voting further serves to entrench one’s own view and eliminates the interaction with different ideas.

Some have argued that the polarization of our Congress is due in no small part to Members spending less time working out differences in face-to-face settings and failing to develop personal relationships with those across the aisle. If that is the case, the turn to proxy voting will only further exacerbate the polarization of Congress to the detriment of the American people.

Beyond the Constitutional and institutional implications, there are practical concerns with the Majority’s proposal. These could have been further explored through a series of hearings; however, the Majority seems determined on pushing this proposal through as expeditiously as possible.

Rather than providing Members certainty and clarification, the Majority’s resolution instead generates a series of questions about how their proxy voting scheme will operate: questions that must be answered before a monumental proposal like this should be implemented. The Electronic Voting System (EVS) underwent three years of testing before it was fully implemented; yet, the Majority seems to think proxy voting can be implemented with the flip of a switch. In discussions with the Office of the Clerk, we remain

concerned about the ability and of the Clerk's office to authenticate and certify the grantor of the proxy in real time.

Additionally, there are a series of questions generated by introduction of a proxy like addressing the situation of a Member who is unable to find a willing proxy. This may occur for a multitude of reasons, including a Member taking a different position than their potential proxy. Beyond this, since House Rules only prescribe a minimum time for voting, it is unclear how the Majority's proposal would ensure that all Members have an opportunity to inform their proxy on how they wish to vote before the Chair closes a vote, especially on an unanticipated vote.

Instead of moving forward with this resolution, the Majority would do well to use any of the many existing tools at the House's disposal. We note at least three potential alternatives that would allow the House to proceed with business, while not trampling the Constitution or the institution.

First, the House could use the approach it did during the 1918 Spanish Flu, where the House continued to operate by unanimous consent. The Majority should truly consider what legislation will be considered under their proxy voting scheme. We hope it will continue to be legislation that is broadly bipartisan, which has both Senate and White House support. In that scenario, it makes sense that unanimous consent is the appropriate approach to take. If, however, the Majority is intending to undertake partisan legislation that has no chance of becoming law, their current approach, which seeks to leverage their slim majority, makes sense.

Second, the House could continue to operate as it did for the vote on the CARES Act. This would maintain appropriate safeguards recommended by both the Office of the Attending Physician and the House Sergeant-at-Arms to ensure the safety of all Members and staff. Additional precautions could be implemented, if desired, to further protect the safety of all Members and staff.

Third, the House could avail itself of Rule XX, clause 5, which provides for the establishment of a provisional quorum in the event of a catastrophic event. The rule specifically contemplates use of this procedure in the event of "catastrophic circumstances involving natural disaster, attack, *contagion*, or similar calamity rendering Representatives incapable of attending the proceedings of the House" (*emphasis added*). This rule change was implemented after the 9/11 attacks on a bipartisan basis four years after consideration, not one month. Any of these tools should be used before creating more extraordinary, constitutionally untested processes.

The second major provision included in this resolution is more notable for what is absent from it than from what it contains. While this resolution purports to provide committees with the authority to operate remotely, it provides no specific details on how committees are to accomplish this objective. It is critical that many of the real technological challenges are addressed prior to implementation of any remote operations by committees.

Serious implementation challenges exist to ensuring that committees are able to function remotely, first and foremost being the issue of cybersecurity. The House is subject to more than 1.6 million cyberattacks per month and currently, there are no House authorized products which would allow committees to meet securely.

Many of the existing platforms that committees have used thus far have significant vulnerability issues that could be exploited, should the Majority continue down this path.

Additionally, this resolution makes no effort to ensure the protection of the rights of the Minority or hold the chairs of committees accountable for adhering to the rules of the House and guaranteeing equal participation by all committee members. Under this resolution, Members of Congress wishing to exercise their constitutional responsibilities can only do so to the extent allowed by the chair. It remains troubling that there are no details as to how remote committee operations will function under this resolution. How a chair will dispense of motions, how a chair will ensure any member retains the right to offer amendments at any time, how the ruling of the chair may be appealed—these are just a few of the questions that have gone unanswered by the Majority. We are concerned that this resolution not only consolidates for the chair the legislative power belonging to all members of the committee, but provides no recourse or mechanism whereby committee chairmen are held accountable to their fellow members and the American people for actions that disserve democracy and violate the rules of the House. It should be noted that we have raised on numerous occasions specific instances where this Majority's chairmen have failed to follow their own committee rules and the rules of the House. Although it comes as no surprise since this Majority seems to be more interested in expediting its partisan liberal agenda than preserving the integrity of the legislative process and any semblance of bipartisanship.

Beyond these concerns, there are practical challenges that must be addressed. In a remote committee markup, how will amendments be distributed? Given that some committees have time zone differentials of 22 hours, how will committee activities be scheduled? How will a committee ensure all Members can attend and participate when broadband internet access, especially in rural and remote areas, can be limited? These questions deserve more than a cursory glance in a Rules Committee hearing and markup.

As if the first four sections of this resolution didn't go far enough to upend the integrity and transparency of the proceedings of this body, Section 5 places the future of remote voting in the House of Representatives in the hands of one individual: the chair of the Committee on House Administration. The gravity of this language cannot be overstated. Remote voting fundamentally alters what it means to be the People's House and to make such a lasting and catastrophe change through a report issued by one person should cause every American pause. Transparency, vote integrity, and equal participation cannot exist if the House moves from a physical location to the virtual ether. We shudder to think of the implications of this move on an already hyper-partisan environment. Bipartisanship—the overcoming of barriers—relies on the organic forming of relationships through physical human connection and conversation and a change of this magnitude demands more thought than a casually written page and a half of legislative text.

There was potential for there to be bipartisan agreement on how to address current and future pandemics. And as we've expressed previously, we would like nothing more than to find a way to work

with our colleagues in the Majority to address some of these real issues. Sadly, the Majority's dedication to circumventing the standing rules that have existed from the first Congress leaves little room for deliberation and discussion. Making fundamental changes to how the House operates should be done in a thoughtful manner—not simply as a reaction to an emergent need and an opportunity to consolidate power and diminish the rights of the minority party.

TOM COLE.
ROB WOODALL.
MICHAEL C. BURGESS, MD
DEBBIE LESKO.

